Michigan Constitutional Convention of 1961
Committee Proposal 91a
Const 1963, Schedule, § 6

Relevant Material From the Constitutional Convention Record

Cross-Reference and Indices . . . . . pp. 3436, 3451, 3475

First Reading . . . . . pp. 757, 1256-1259, 1313-1355, 1564-1566, 1569-1604, 1617-1620, 2191

Second Reading . . . . . pp. 2722-2737

Draft Constitution (Schedule, § 7) . . . . . pp. 3047-3075 (p. 3074)

Third Reading, Article-by-Article . . . . . pp. 3125, 3138-3140

Draft Constitution (Schedule, § 7) . . . . . pp. 3215-3237 (p. 3236)

Third Reading, Full Constitution . . . . . pp. 3294-3301

Adopted Constitution (Schedule, § 6) . . . . . pp. 3319-3353 (p. 3351)

Address to the People . . . . . p. 3408

Overview of the Constitutional Convention Process

Provisions generally began as Committee Proposals and were then brought to the convention floor for first reading. The majority of debate on the substance of provisions occurred during the first and second readings. There were two third readings; the first on an article-by-article basis and the second reviewing the Constitution as a whole. Following the third readings the entire Constitution was voted on by the delegates. The delegates then created the Notice of Address to the People, summarizing the Constitution on a provision-by-provision basis, which was distributed so that the people could be informed when making their ratification votes.

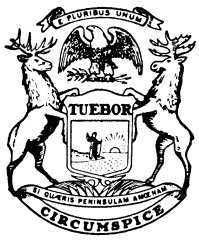
The convention used ALL CAPS to denote added material and [brackets] to denote removed material.

State of Michigan

CONSTITUTIONAL CONVENTION

1961

OFFICIAL RECORD



FRED I. CHASE
Secretary of the Convention

AUSTIN C. KNAPP
Editor

LYNN M. NETHAWAY
Associate Editor

TABLE III—ARTICLES AND SECTIONS OF 1963 CONSTITUTION TO 1908 CONSTITUTION WITH COMMITTEE PROPOSAL REFERENCE

The Committee Proposal number and section are as re-referred to the committee on style and drafting.

* Created by the committee on style and drafting.

1963		1908		Committee Proposal
Preamble		Preamble		14
Art.	Sec.	Art.	Sec.	
I	1	II	1	15-1
I	2	none		26
I	3	II	2	15-2
I	4	II	3	15-3
I	5	II	4	15-4
I	6	II	5	15-5
I	7	II	6	15-6
I	8	II	7	15-7
I	9	II	8	15-8
I	10	II	9	15-9
I	11	II	10	15-10
I	12	II	11	15-11
I	13	II	12	15-12
I	14	II	13	15-13
I	15	II	14	15-14
I	16	II	15	15-15
I	17	II	16	15-16
I	18	II	17	15-17
I	19	II	18	15-18
I	20	II	19	15-19
I	21	II	20	15-20
I	22	II	21	15-21
I	23	none		15-1
II	1	III	1,2,3	58a
II	2	none		58b
II	3	none		58c
II	4	III	1,8	58d
II	5	V	12	58e
		VI	1	
		VII	2,9,14	
		VIII	3,18	
		XI	2,3,6, 7, 16	
II	6	III	4	58f
II	7	III	9	58h
II	8	III	8	58g
II	9(¶2*)	V	1	118b
III	1	I	2	10
III	2	IV	1,2	21
III	3	VI	11,12	18
III	4	XV	1,2,3	19
III	5	none		128
III	6	X	14	101
III	7	S	1	44a
III	8	none		96k
IV	1	V	1	118a
IV	2	V	2	80a
IV	3	V	3	80b
IV	4	none		80c
IV	5*	none		...
IV	6	V	4	79
IV	7	V	5	32
IV	8	V	6	112
IV	9	V	7	120
IV	10	V	7	115
		V	25	
IV	11	V	8	33
IV	12	V	9,10	28
IV	13	V	13	116
IV	14	V	14	34
IV	15	none		102c
IV	16	V	15	102a
IV	17	none		102b
IV	18	V	16	114
IV	19	V	17	117
IV	20	V	18	103
IV	21	V	18	103
IV	22	V	19	35
IV	23	V	20	29
IV	24	V	21	121
		V	22	105
IV	25	V	21	121
IV	26	V	22	105
		V	23	104
IV	27	V	21	121
IV	28	V	22	105
IV	29	V	30	119
IV	30	V	24	41
IV	31	none		46b
IV	32	X	6	53
IV	33	V	36	70
IV	34	V	38	113
IV	35	V	39	24
IV	36	V	40	108
IV	37	none		123
IV	38	XVI	5	122
IV	39	XVI	5	122
IV	40	XVI	11	27
IV	41	V	33	100
IV	42	VIII	30	87
IV	43	XII	9	5
IV	44	V	27	99
IV	45	V	28	106
IV	46	none		20
IV	47	V	26	111
IV	48	XVI	7	109
IV	49	V	29	110
IV	50	none		127
IV	51	none		126
IV	52	none		125
IV	53	VI	1	78
V	1	VI	2	2
V	2	none		71b
V	3	none		71b
V	4	none		71b
V	5	none		71b
V	6	none		71g
V	7	VI	10	71e
V	8	VI	3	71d
V	9	VI	1	71c
V	10	IX	7	71g
V	11	IX	5	71f
V	12	VI	4	3
V	13	VI	6	7
V	14	VI	9	16
V	15	VI	7	8
V	16	VI	8	9
V	17	VI	5	4
V	18	none		46a
V	19	V	37	46c
V	20	none		46d
V	21(¶3*)	VI	1	71a
V	22	VI	13	17
V	23	VI	21	75
V	24	none		77
V	25	VI	19	71b
V	26	VI	16,17	59,60
V	27	VI	18	72
V	28	none		71h
V	29	none		71i-71A
VI	1	VII	1	90
VI	2	VII	2,23	91a
VI	3	VII	2	91b
VI	4	VII	4	91c
VI	5	VII	5	91d
VI	6	VII	7	91e
VI	7	VII	6	91f
VI	8	none		92a
VI	9	none		92b
VI	10	none		92c
VI	11	VII	8	93a
VI	12	VII	9,23	93b
VI	13	VII	10	93c
VI	14	VII	11	93d
VI	15	VII	13	94a
VI	16	VII	14,23	94b
VI	17	none		96a[1]
VI	18	VII	12	96g
VI	19	VII	17	96a
VI	20	VII	19	96b
VI	21	VII	9	96c
VI	22	none		96l
VI	23	VII	20	96d
VI	24	VII	23	96e
VI	25	IX	6	96h
VI	26	VII	15,16, 21	96i
VI	27	VII	6,11	96n
VI	28	none		95
VI	29	VII	18	96o
VII	1	VIII	1	81a
VII	2	none		89
VII	3	VIII	2	81b
VII	4	VIII	3	81c
VII	5	VIII	4	81d
VII	6	VIII	5	81e
VII	7	VIII	7	81f
VII	8	VIII	8	81g
VII	9	VIII	9	81h
VII	10	VIII	13	81j
VII	11	VIII	12	81i
VII	12	VIII	14	81k
VII	13	none		81n
VII	14	VIII	15	81l
VII	15	none		85c
VII	16	VIII	26	86a
VII	17	VIII	16	82a
VII	18	VIII	17,18	82b,c
VII	19	VIII	19	82e
VII	20	none		82d
VII	21	VIII	20	83a
VII	22	VIII	21	83b
VII	23	VIII	22	83c
VII	24	VIII	23	83e
VII	25	VIII	25	83f
VII	26	VIII	25	83d
VII	27	VIII	31	88a
VII	28	VIII	31	88b
VII	29	VIII	28	85a
VII	30	VIII	29	85b
VII	31	VIII	27	86b
VII	32	none		57
VII	33	IX	8	42e
VII	34	none		84
VIII	1	XI	1	1
VIII	2	XI	9	30
VIII	3	XI	2,6	47
VIII	4	XI	10	98a
VIII	5	XI	3,4,5, 7,8,16	98b
VIII	6	none		98c
VIII	7	none		98d
VIII	8	XI	15	13
VIII	9	XI	14	31
IX	1	X	2	50
IX	2	X	9	54
IX	3	X	3,4,7,8	51
IX	4	none		51
IX	5	X	3,5	52
IX	6	X	21	56

Committee Proposal No. — Page

85: Cont'd.
Feb. 15, considered, amended, passed by committee of the whole 1090-1091
Feb. 16, reported by committee of the whole with 2 amendments; amendments concurred in; referred to style and drafting 1107
Mar. 27, reported by style and drafting (Report 43); placed on order of second reading 1890
Apr. 17, read second time; passed; rereferred to style and drafting 2538-2540

86. A proposal pertaining to highways and their maintenance. Amends article VIII, sections 26 and 27.
For text as offered and reasons 1057
As referred to style and drafting 1057
As reported by style and drafting 2540
As rereferred to style and drafting 2540
Feb. 2, reported by local government; referred to committee of the whole 756
Feb. 14, read first time; considered, passed by committee of the whole 1057-1059
Feb. 14, reported by committee of the whole without amendment; referred to style and drafting .. 1065
Mar. 27, reported by style and drafting (Report 44); placed on order of second reading 1890
Apr. 17, read second time; amended, passed; rereferred to style and drafting 2540

87. A proposal relating to ports and port districts. Retains section 30 of article VIII unchanged.
For text as offered and reasons 1059
As referred to style and drafting 1059
As reported by style and drafting 2540
As rereferred to style and drafting 2540
Feb. 2, reported by local government; referred to committee of the whole 756
Feb. 14, read first time; considered, passed by committee of the whole 1059
Feb. 14, reported by committee of the whole without amendment; referred to style and drafting 1065
Mar. 27, reported by style and drafting (Report 45); placed on order of second reading 1890
Apr. 17, read second time; passed; rereferred to style and drafting 2540-2541

88. A proposal pertaining to metropolitan areas. Amends article VIII.
For text as offered and reasons 1059
As referred to style and drafting 1107
As reported by style and drafting 2541
As rereferred to style and drafting 2545
Feb. 2, reported by local government; referred to committee of the whole 756
Feb. 14, read first time; sections a, b considered; section a passed by committee of the whole .. 1059-1064
Feb. 15, section b considered, amended, passed; committee proposal as amended considered, passed by committee of the whole 1071-1090
Feb. 15, reported by committee of the whole with 1 amendment; amendment concurred in 1105
Feb. 16, considered; referred to style and drafting 1107
Mar. 27, reported by style and drafting (Report 46); placed on order of second reading 1890
Apr. 17, read second time; amended, passed; rereferred to style and drafting 2541-2546

89. A proposal pertaining to county home rule. Amends article VIII.
For text as offered and reasons 1091
For minority report and reasons 1092
As referred to style and drafting 1133
As reported by style and drafting 2546
As rereferred to style and drafting 2551
Feb. 2, reported by local government; referred to committee of the whole 756
Feb. 15, read first time; section a considered, amended by committee of the whole 1091-1105
Feb. 16, section b considered, amended; committee proposal as amended considered, passed by committee of the whole 1107-1108
Feb. 16, reported by committee of the whole with 2 amendments; amendments concurred in; amended; referred to style and drafting 1111-1133

Committee Proposal No. — Page

89: Cont'd.
Mar. 27, reported by style and drafting (Report 47); placed on order of second reading 1891
Apr. 17, read second time; amended, passed; rereferred to style and drafting 2546-2551

90. A proposal pertaining to the judicial branch. A substitute for section 1 of article VII.
For text as offered and reasons 1240
For minority report and reasons 1241
As referred to style and drafting 1240
As reported by style and drafting 2672
As rereferred to style and drafting 2672
Feb. 2, reported by judicial branch; referred to committee of the whole 757
Feb. 22, read first time; considered, passed by committee of the whole 1240-1256
Feb. 22, reported by committee of the whole without amendment; referred to style and drafting. 1260-1261
Apr. 6, reported by style and drafting (Report 52); placed on order of second reading 2191
Apr. 23, read second time; passed; rereferred to style and drafting 2672-2673

91. A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII.
For text as offered and reasons 1256
For minority reports and reasons 1259
As referred to style and drafting 1620
As reported by style and drafting 2722
As rereferred to style and drafting 2736
Feb. 2, reported by judicial branch; referred to committee of the whole 757
Feb. 22, read first time; sections a, b considered; section a postponed by committee of the whole. 1256-1260
Feb. 23, sections b, c considered, amended, passed by committee of the whole 1262-1274, 1275-1287
Feb. 26, sections d, e, f considered; section d passed; sections e, f amended, passed by committee of the whole 1289-1312
Feb. 27, section g considered, amended by committee of the whole 1313-1342
Feb. 28, section a considered; consideration postponed by committee of the whole 1343-1355
Mar. 9, section a considered by committee of the whole 1564-1566
Mar. 12, section a considered by committee of the whole 1569-1595
Mar. 13, sections a, g considered, amended, passed; committee proposal as amended considered, passed by committee of the whole 1596-1604
Mar. 13, reported by committee of the whole with 8 amendments; amendments concurred in; referred to style and drafting 1617-1620
Apr. 6, reported by style and drafting (Report 53); placed on order of second reading 2191
Apr. 24, read second time; amended, passed; rereferred to style and drafting 2722-2737

92. A proposal pertaining to a court of appeals. Amends article VII.
For text as offered and reasons 1604
As referred to style and drafting 1616
As reported by style and drafting 2673
As rereferred to style and drafting 2673
Feb. 2, reported by judicial branch; referred to committee of the whole 757
Feb. 28, consideration postponed by committee of the whole 1355
Mar. 13, read first time; considered, passed by committee of the whole 1604-1609
Mar. 13, reported by committee of the whole without amendment; amended; referred to style and drafting 1611-1617
Apr. 6, reported by style and drafting (Report 54); placed on order of second reading 2191
Apr. 23, read second time; passed; rereferred to style and drafting 2673-2675

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Schedule and Temporary Provisions, Section 2: Cont'd.
Aug. 1, considered; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people 3408

Section 3. Officers, continuance in office. Terms of office. (Committee Proposals 44c and 71g)
May 7, reported; placed on order of third reading.. 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported; placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people .. 3408

Section 4. Officers elected in spring of 1963, term. (Committee Proposal 68b)
May 7, reported; placed on order of third reading.. 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported; placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people .. 3408

Section 5. State elective executive officers and senators, 2 and 4 year terms. (Committee Proposals 71a and 80b)
May 7, reported; placed on order of third reading.. 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported; placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people.... 3408

[Original section 6. Senate apportionment. (Committee Proposal 80a)
May 7, reported; placed on order of third reading.. 3045
May 9, read third time; amended; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported; placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; deleted by amendment .... 3291-3299]

Section 6 (originally section 7). Supreme court, reduction to 7 justices. (Committee Proposal 91a)
May 7, reported (as section 7); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 7); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 6; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people 3408

Section 7 (originally section 8). Judges of probate, eligibility for re-election. (Committee Proposal 96f)
May 7, reported (as section 8); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 8); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 7; adopted 3291-3301
For text as adopted 3351
For text, and comments in address to the people 3408

Section 8 (originally section 9). Judicial officers, staggered terms. (Committee Proposal 96j)
May 7, reported (as section 9); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 9); placed on order of third reading; considered read third time; passed 3213-3275

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Schedule and Temporary Provisions, Section 8: Cont'd.
Aug. 1, considered; renumbered to section 8; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people .. 3408

Section 9 (originally section 10). State board of education; first election, terms. Abolition of existing state board of education. (Committee Proposal 47)
May 7, reported (as section 10); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 10); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 9; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people ... 3409

Section 10 (originally section 11). Boards controlling higher education institutions and state board of public community and junior colleges, terms. (Created by style and drafting)
May 7, reported (as section 11); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 11); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 10; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people 3409

Section 11 (originally section 12). Michigan State University trustees and Wayne State University governors, terms. (Created by style and drafting)
May 7, reported (as section 12); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 12); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 11; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people .. 3409

Section 12 (originally section 13). Initial allocation of departments by law or executive order. (Committee Proposal 71b)
May 7, reported (as section 13); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 13); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 12; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people .. 3409

Section 13 (originally section 14). State contracts, continuance. Korean service bonus bonds, appropriation. (Committee Proposal 6)
May 7, reported (as section 14); placed on order of third reading 3045
May 9, read third time; passed 3208-3210
May 9, referred to committee on style and drafting 3210
May 11, reported (as section 14); placed on order of third reading; considered read third time; passed 3213-3275
Aug. 1, considered; renumbered to section 13; adopted 3291-3301
For text as adopted 3352
For text, and comments in address to the people .. 3409

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 90,** A proposal pertaining to the judicial branch. A substitute for section 1 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 90 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 91,** A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 91 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 92,** A proposal pertaining to a court of appeals. Amends article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 92 and the reasons submitted in support thereof, see below under date of March 13.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 93,** A proposal pertaining to the circuit court. A substitute for sections 8, 9, 10 and 11 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 93 and the reasons submitted in support thereof, see below under date of February 28.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 94,** A proposal pertaining to the probate court. A substitute for sections 13 and 14 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 94 and the reasons submitted in support thereof, see below under date of March 1.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 95,** A proposal pertaining to appeals from administrative tribunals. Adds a new section to article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 95 and the reasons submitted in support thereof, see below under date of March 5.

Mr. Danhof, for the committee on judicial branch, introduced **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. A substitute for sections 17, 19, 20 and 23 of article VII;
with the recommendation that it pass.

Robert J. Danhof, chairman.

For Committee Proposal 96 and the reasons submitted in support thereof, see below under date of March 6.

Mr. Bentley, for the committee on education, introduced **Committee Proposal 97,** A proposal to amend article XI by adding a new section pertaining to the arts and recreation;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 97 and the reasons submitted in support thereof, see below under date of February 22.

Mr. Bentley, for the committee on education, introduced **Committee Proposal 98,** A proposal pertaining to the educational institutions of the state. Replaces sections 3, 4, 5, 7, 8, 10 and 16 of article XI;
with the recommendation that it pass.

Alvin M. Bentley, chairman.

For Committee Proposal 98 and the reasons submitted in support thereof, see below under date of February 16.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 99,** A proposal to provide that the legislature may provide for a jury of less than 12 in civil cases. Amends article V, section 27;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 99 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 100,** A proposal to provide that the legislature shall not authorize lotteries or the sale of lottery tickets. Retains article V, section 33;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 100 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 101,** A proposal to provide that the state shall not engage in internal improvements except in certain specified areas and except that the legislature may empower local subdivisions to act in the area of internal improvements. Amends article X, section 14;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 101 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 102,** A proposal to provide that each house of the legislature may choose its officers, determine its rules, judge qualifications of its members and other matters. Amends article V, section 15;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 102 and the reasons submitted in support thereof, see below under date of April 12.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 103,** A proposal to provide that sessions of the legislature be open and that a concurrent resolution is necessary for adjournment for more than 3 days. Amends article V, section 18;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 103 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 104,** A proposal to provide for 3 readings of a bill before passage and for passage of bills by a majority of the members elected. Retains article V, section 23;
with the recommendation that it pass.

T. Jefferson Hoxie, chairman.

For Committee Proposal 104 and the reasons submitted in support thereof, see below under date of April 11.

Mr. Hoxie, for the committee on legislative powers, introduced **Committee Proposal 105,** A proposal to provide that bills must

way limits the legislature in changing the jurisdiction of existing courts but it is our view that before they take the step of creating an entirely new court as a part of the system, they ought to be absolutely sure of what they are doing over there.

CHAIRMAN VAN DUSEN: Mr. Everett, do you still desire recognition?

MR. EVERETT: I pass.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Habermehl which the secretary will read.

SECRETARY CHASE: Mr. Habermehl's amendment:

[The amendment was again read by the secretary. For text, see above, page 1255.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment will say aye. Opposed will say no.

The amendment does not prevail. Are there further amendments to the proposal?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the proposal will pass. Committee Proposal 90 is passed and the secretary will read.

SECRETARY CHASE: Item 2 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 91,** A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII.

Following is Committee Proposal 91 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE SUPREME COURT SHALL CONSIST OF 9 JUSTICES, TO BE ELECTED BY THE ELECTORS OF THE STATE. THE TERM OF OFFICE SHALL BE 8 YEARS. NOT MORE THAN 3 TERMS OF OFFICE SHALL EXPIRE AT THE SAME TIME.

Sec. b. ONE JUSTICE OF THE SUPREME COURT SHALL BE SELECTED BY THE COURT AS ITS CHIEF JUSTICE IN THE MANNER AND FOR THE TERM PROVIDED BY THE RULES OF THE COURT. HE SHALL PERFORM SUCH OTHER DUTIES AS MAY BE REQUIRED BY THE COURT. THE SUPREME COURT SHALL APPOINT AN ADMINISTRATOR OF THE COURTS AND OTHER JUDICIAL ASSISTANTS AS SHALL BE DEEMED NECESSARY TO AID IN THE ADMINISTRATION OF THE COURTS IN THE STATE. THE ADMINISTRATOR SHALL, UNDER THE DIRECTION OF THE SUPREME COURT, PREPARE AND SUBMIT TO THE LEGISLATURE THE BUDGET FOR THE COURT AND PERFORM ALL OTHER NECESSARY FUNCTIONS RELATING TO THE REVENUES AND EXPENDITURES OF THE COURT. HE SHALL PERFORM THE OTHER DUTIES THAT MAY BE ASSIGNED BY THE COURT.

Sec. c. THE SUPREME COURT SHALL HAVE: A GENERAL SUPERINTENDING CONTROL OVER ALL COURTS; POWER TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; APPELLATE JURISDICTION AS PROVIDED BY SUPREME COURT RULE.

Sec. d. THE SUPREME COURT SHALL BY GENERAL RULES ESTABLISH, MODIFY, AMEND AND SIMPLIFY THE PRACTICE AND PROCEDURE IN ALL COURTS IN THE STATE. THE DISTINCTIONS BETWEEN LAW AND EQUITY PROCEEDING SHALL, AS FAR AS PRACTICABLE, BE ABOLISHED. THE OFFICE OF MASTER IN CHANCERY IS PROHIBITED.

Sec. e. DECISIONS OF THE SUPREME COURT, INCLUDING ALL DECISIONS ON PREROGATIVE WRITS, SHALL BE IN WRITING AND SHALL CONTAIN A CONCISE STATEMENT OF THE FACTS AND REASONS FOR EACH DECISION. WHEN A JUDGE DISSENTS IN WHOLE OR IN PART HE SHALL GIVE IN WRITING THE REASONS FOR HIS DISSENT.

Sec. f. THE SUPREME COURT MAY APPOINT AND REMOVE ITS STAFF AND SHALL HAVE GENERAL SUPERVISION OF THE STAFF OF THE COURT AND CONTROL OF THE EXPENDITURE OF THE FUNDS APPROPRIATED FOR ANY PURPOSE PERTAINING TO THE OPERATION OF THE COURT OR THE PERFORMANCE OF ACTIVITIES OF ITS STAFF, EXCEPT THAT THE SALARIES OF THE JUSTICES OF THE SUPREME COURT SHALL BE ESTABLISHED BY LAW. ALL FEES, PERQUISITES AND INCOME COLLECTED BY THE CLERK SHALL BE TURNED OVER BY HIM TO THE STATE TREASURY AND CREDITED TO THE GENERAL FUND. NO JUSTICE OF THE SUPREME COURT SHALL EXERCISE ANY OTHER POWER OF APPOINTMENT TO PUBLIC OFFICE, EXCEPT AS OTHERWISE PROVIDED HEREIN.

Sec. g. ALL PRIMARY ELECTIONS AND ELECTIONS OF JUSTICES OF THE SUPREME COURT SHALL BE NONPARTISAN. THERE ARE HEREBY ESTABLISHED 7 JUDICIAL DISTRICTS, INITIALLY CONSTITUTED AS FOLLOWS:

JUDICIAL DISTRICT 1, COMPRISING WAYNE COUNTY.

JUDICIAL DISTRICT 2, COMPRISING OAKLAND COUNTY.

JUDICIAL DISTRICT 3, COMPRISING THE COUNTIES OF MONROE, LENAWEE, WASHTENAW, LIVINGSTON, SHIAWASSEE AND GENESEE.

JUDICIAL DISTRICT 4, COMPRISING THE COUNTIES OF MACOMB, ST. CLAIR, SANILAC, HURON, LAPEER, TUSCOLA AND SAGINAW.

JUDICIAL DISTRICT 5, COMPRISING THE COUNTIES OF BERRIEN, CASS, VAN BUREN, KALAMAZOO, ST. JOSEPH, BRANCH, CALHOUN, HILLSDALE, JACKSON AND INGHAM.

JUDICIAL DISTRICT 6, COMPRISING THE COUNTIES OF MUSKEGON, KENT, OTTAWA, MONTCALM, IONIA, GRATIOT, CLINTON, ALLEGAN, BARRY AND EATON.

JUDICIAL DISTRICT 7, COMPRISING ALL OTHER COUNTIES OF THE STATE.

THERE SHALL BE NOMINATED AND ELECTED 3 JUDGES FROM JUDICIAL DISTRICT 1, AND 1 JUSTICE FROM EACH OF THE JUDICIAL DISTRICTS 2 TO 7, INCLUSIVE.

THE LEGISLATURE SHALL, IF NECESSARY, PROVIDE BY LAW FOR TRANSFER OF COUNTIES FROM ONE JUDICIAL DISTRICT TO ANOTHER ON JANUARY 1, 1973, AND EACH TENTH YEAR THEREAFTER, TO THE END THAT NO JUDICIAL DISTRICT SHALL HAVE A POPULATION BASED UPON THE LAST UNITED STATES DECENNIAL CENSUS OF LESS THAN ¼ NOR MORE THAN ½ OF THE POPULATION OF JUDICIAL DISTRICT 1: BUT NO SUCH CHANGE SHALL HAVE THE EFFECT OF REMOVING A JUSTICE FROM OFFICE, OR AFFECT HIS QUALIFICATIONS TO BECOME A CANDIDATE FOR REELECTION IN THE DISTRICT FROM WHICH ELECTED.

EXCEPT AS IN THIS CONSTITUTION OTHERWISE PROVIDED, ALL PRIMARY ELECTION AND ELECTION LAWS, INCLUDING LAWS PERTAINING TO PARTISAN PRIMARIES AND ELECTIONS, SHALL, SO FAR AS APPLICABLE, GOVERN NOMINATING PROCEDURES, PRIMARY ELECTIONS, AND ELECTIONS HEREUNDER.

ALL JUSTICES OF THE SUPREME COURT HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECIVE, SHALL SERVE OUT

Explanation—Matter within [ ] is stricken, matter in capitals is new.

THE TERM FOR WHICH THEY SHALL HAVE HERETOFORE BEEN ELECTED OR APPOINTED.

ANY JUSTICE HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECTIVE, WHO IS NOT OTHERWISE DISQUALIFIED FOR REELECTION, MAY BE A CANDIDATE FOR REELECTION IN ANY DISTRICT WITHOUT REGARD TO HIS PLACE OF RESIDENCE.

ALL CANDIDATES FOR ELECTION AS JUSTICE OF THE SUPREME COURT WHO ARE NOT HOLDING OFFICE ON THE DATE THIS CONSTITUTION SHALL BECOME EFFECTIVE, SHALL BE RESIDENTS OF THE JUDICIAL DISTRICT FROM WHICH THEY ARE CANDIDATES.

TRANSITION FROM THE PRESENT ESTABLISHED LAW FOR THE ELECTION OF JUSTICES OF THE SUPREME COURT TO THE METHOD HEREIN PROVIDED SHALL BE PROVIDED BY LAW, INCLUDING THE ORDER OF ROTATION IN WHICH ELECTIONS SHALL BE MADE FROM EACH OF THE FOREGOING JUDICIAL DISTRICTS.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 91:

Sec. a. This section supplants section a, article VII of the Constitution of 1908 increasing the total number of justices to 9. It eliminates a former provision concerning the chief justice, "to be chosen by the electors of the state" and, in the last section, provides for the election of the chief justice by the members of the court. This section continues the present statutory 8 year term of office. By reason of the increase in total membership of the court, the last sentence provides for not more than 3 terms of office to expire at the same time — thus replacing the present provision that "Not more than 2 justices shall go out of office at the same time."

Sec. b. This is a new section. The first sentence clearly provides for the selection of the chief justice by the members of the court. This has been the practice of the court for several decades, although section 2 of article VII of the Constitution of 1908 would appear to require that the chief justice "be chosen by the electors of the state."

The committee is of the opinion that the members of the court are better qualified than the electors to make the selection of their own chief justice. This provision will give constitutional sanction to the existing practice.

The second sentence clearly provides a method for establishing the duties of the chief justice.

The third and fourth sentences implement the language appearing in section 4 with reference to the power of "superintending control" over all courts of lesser jurisdiction. This language will give constitutional sanction to the existing office of the court administrator, and will clearly spell out the source of his authority.

Sec. c. This section is a revision of section 4 of article VII of the Constitution of 1908. It substitutes the general term, "prerogative and remedial writs" for the list of historic writs contained in the 1908 constitution. The change accomplished by the final language permits the court to control its appellate jurisdiction by rule. It is the opinion of the committee that the language proposed will shorten and clarify this section.

Sec. d. This section is a revision of section 5 of article VII of the Constitution of 1908. In addition to existing powers of the court, power is conferred to simplify both practice and procedure. The second sentence gives constitutional sanction to the judicature act of 1960, by which distinctions between law and equity have been abolished. The last sentence continues the language of the 1908 constitution without change so that the office of master in chancery is prohibited.

Sec. e. This section is a revision of section 7 of article VII of the Constitution of 1908. The reference to "prerogative writs" replaces the list of historic writs contained in the present constitution. The proposed section continues the requirement of written opinions with a statement of facts and reasons for each decision. The final sentence requires a statement of reasons for all dissents whether in whole or in part. The eliminated language of the 1908 constitution requiring signature of opinions and filing of the same is, in the opinion of the committee, unnecessary. This practice is well established and it appears unnecessary to encumber the constitution with this requirement.

Sec. f. This is a new section, replacing and simplifying section 6. It extends the appointive power of the supreme court and its supervising control to its entire staff, instead of limiting it to the officers named in section 6 of article VII of the Constitution of 1908.

It continues the existing requirement that all receipts of the court shall be credited to the general fund. It also continues the prohibition against appointments by the supreme court to public office, excepting for the appointment of the staff of that court and other appointments of retired members of the judiciary to fill vacancies in the courts of the state by appointment of retired members of the judiciary. The details of such appointment which will continue only until such vacancies are filled by election, are covered in other sections of this committee's proposals.

Other proposals of this committee, which will be separately dealt with, permit the supreme court to authorize persons who have served as judges and who have voluntarily retired, to perform judicial duties for a limited period of time until a vacancy in judicial office is filled by election. The final language of this proposal is for the purpose of permitting the supreme court to make such interim appointments, and in the opinion of the committee, is necessary to correlate these 2 sections.

Sec. g. The committee on judicial branch has had under consideration since November 7, 1961, Delegate Proposal 1218. This was revised and again submitted on December 1, 1961, as Delegate Proposal 1488. The committee has heard the testimony from scores of witnesses bearing upon the method to be used in nomination and election of the justices of the supreme court. It has been faced with a choice between:

1. Some appointive method providing either for appointment of justices of the supreme court by the governor:

(a) With the advice and consent of the senate; or

(b) From a list of qualified appointees submitted in accordance with the so called "Missouri plan", or "ABA plan".

2. The continuance of the present provisions of section 23, as implemented by statute, which results in partisan nomination of justices of the supreme court followed by "nonpartisan" statewide election.

3. A constitutional change or direction to the legislature to provide for a statewide nonpartisan primary followed by a statewide nonpartisan election or, in the alternative, a statewide partisan primary followed by a statewide partisan election.

4. A plan for election of justices of the supreme court from areas within the state so arranged as to be as nearly as possible equal in population and availability of qualified candidates.

On January 16, 1962, the committee first considered the general subject of appointment as a general principle, with a vote of 18 opposing, one in favor and 2 absent.

On the same date, the committee took a tentative vote on the Missouri and ABA plans with the result that 15 opposed this principle; 3 were in favor of it and 3 were absent.

This was followed by a tentative vote on the principle of continuing some elective system. This vote resulted in 10 in favor, 8 opposed and 3 absent.

Following these tentative votes, additional work continued by members of the committee toward further refinement and perfection of the plan for district nonpartisan nomination and election of justices of the supreme court.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

This work was completed and a revised proposal was submitted on January 25, 1962.

This revised plan established 7 judicial districts and provided for the nonpartisan nomination and election of 3 members of a 9 man court from judicial district 1, comprising the county of Wayne and containing 1/3 of the state's population; one justice from Oakland county, containing slightly less than 1/9 of the state's population but having a growth potential; and one justice each from each district as follows:

JUDICIAL DISTRICT 3, COMPRISING THE COUNTIES OF MONROE, LENAWEE, WASHTENAW, LIVINGSTON, SHIAWASSEE AND GENESEE.

JUDICIAL DISTRICT 4, COMPRISING THE COUNTIES OF MACOMB, ST. CLAIR, SANILAC, HURON, LAPEER, TUSCOLA AND SAGINAW.

JUDICIAL DISTRICT 5, COMPRISING THE COUNTIES OF BERRIEN, CASS, VAN BUREN, KALAMAZOO, ST. JOSEPH, BRANCH, CALHOUN, HILLSDALE, JACKSON AND INGHAM.

JUDICIAL DISTRICT 6, COMPRISING THE COUNTIES OF MUSKEGON, KENT, OTTAWA, MONTCALM, IONIA, GRATIOT, CLINTON, ALLEGAN, BARRY AND EATON.

JUDICIAL DISTRICT 7, COMPRISING ALL OTHER COUNTIES OF THE STATE.

The relative population of the districts so established would then be as follows:

Judicial district number	Number of counties	Number of justices	Population per justice
1	1	3	888,766
2	1	1	690,259
3	6	1	817,341
4	7	1	855,308
5	10	1	999,019
6	10	1	904,908
7	48	1	890,062

A study was also made of the distribution of lawyers in the state within each judicial district. This indicated that aside from public officers, house counsel and law school professors, the lawyer population including judiciary and inactive members of the bar in the proposed districts would be approximately as follows:

Judicial districts	Lawyer population
1	4,215
2	566
3	545
4	520
5	767
6	581
7	516

This tabulation illustrates the fairly constant proportion of lawyers to population in each of the proposed judicial districts.

Arguments presented before the committee in support of the district election plan included the following:

1. Candidates would be better known to voters of districts in which they were candidates.

2. The compact and contiguous areas comprising the districts (except possibly district 7) would make it possible for candidates to meet and know the voters which they cannot do when elected on a statewide basis.

3. The division of the state is on a population basis as nearly as possible equal.

4. Balance would be maintained in the type of men sitting on the court between all parts of the state, thus assuring a statewide approach to cases before the court. While such balance is now maintained in part by the present nominating process in which recognition is given to residence of the candidate, among other factors, there is no assurance or legal requirement that this will always obtain.

5. It is consistent with the overwhelming sentiment for a nonpartisan judiciary.

6. It would eliminate the present inconsistency of partisan nomination followed by "nonpartisan" election.

7. It would remove the inordinate expense to be borne by each candidate of having to campaign statewide for nomination (absent nomination at party convention) followed by a second statewide campaign at the individual expense of the candidate presumably without any party backing.

8. Elimination of items mentioned in paragraphs 6 and 7 could be expected to attract as candidates men of the highest ability, regardless of party affiliation or financial status.

9. The assured geographic distribution of justices would make it possible for every lawyer in the state to strive for such excellence that his fellow lawyers and the public might think him worthy to serve on this high court even though he should not become famous as a great trial lawyer.

10. This plan could be equally applicable to the election of judges of the court of appeals and with the same advantages.

11. The districts could be integrated into a court of appeals structure, with

One court of appeals serving district 1;
One court of appeals serving districts 2, 3, 4;
One court of appeals serving districts 5, 6, 7;
and possibly sitting in divisions at:
(a) Grand Rapids;
(b) Some place in the northern portion of the lower peninsula;
(c) Some place in the upper peninsula.

12. The districts are drawn in correspondence to presently existing circuit court boundaries. Thus all cases from any given circuit would be appealed to the same court of appeals.

13. While this plan would be new in Michigan, it is not unique. Some states already have it, notably Illinois, and they thought so highly of it that they retained it in their very recent overhaul of their court system.

14. Such a structure would provide an appellate court located at no great distance from any place in the state and should result in a reduction in both time and expense for those using these courts. Thus the best interest of the public would be served.

The majority of the committee rejected the argument that the district plan would lead to "balkanization of the state and to parochialization of the state's judicial process". It was pointed out by members of the committee who had served as circuit judges in many parts of the state that justice was administered with an even hand regardless of where an individual judge might reside or the location of the court in which he might preside.

It was further pointed out that over the years the justices of the supreme court have been called to that bench from many parts of the state but that once elected they performed their duties with a view to the law in the state as a whole. There was no evidence that the district plan would in any wise change the statewide view of those elected to the supreme court.

Certain members of the committee continued to advocate some appointive system modeled on the Missouri or ABA plan. Others favored continuance of the present partisan nomination followed by nonpartisan election. Still others suggested a return to complete statewide partisan nomination and election. This division in the committee continued until January 31, 1962, at which time the committee voted in favor of the plan as submitted and revised, with 11 votes in favor, 5 opposed and 5 absent or abstaining.

The committee proposal, therefore, contemplates nonpartisan primary and election on a district basis as therein set forth.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

It further provides flexibility in permitting transfer of counties from one judicial district to another following each decennial census, so that no single judicial district would have a population of less than ¼ or more than ½ of the population of judicial district 1, (Wayne county). Such transfer, however, shall not result in removal of a justice, nor shall it disqualify him for reelection.

The proposal makes existing election laws applicable to all primaries and elections for justices of the supreme court. It continues in office incumbent justices without regard to place of residence and permits their reelection. It empowers the legislature to provide for transition from present methods of election to the method provided in the proposal.

Following is minority report A to Committee Proposal 91 as offered (no reasons were submitted in support thereof):

Miss Donnelly, Messrs. Leibrand and McAllister, a minority of the committee on judicial branch, submit the following minority report to Committee Proposal 91:

A minority of the committee recommends that the following be included in the constitution:

Sec. b. ONE JUSTICE OF THE SUPREME COURT SHALL BE SELECTED BY THE COURT AS ITS CHIEF JUSTICE IN THE MANNER AND FOR THE TERM PROVIDED BY THE RULES OF THE COURT.

Sec. c. THE SUPREME COURT SHALL HAVE: A GENERAL SUPERINTENDING CONTROL OVER THE DOCKETS OF THE APPELLATE COURT AND CIRCUIT COURTS; POWER TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; APPELLATE JURISDICTION AS PROVIDED BY SUPREME COURT RULE, IT BEING PROVIDED THAT THE SUPREME COURT SHALL NOT HAVE THE POWER TO REMOVE OR SUSPEND A JUDGE.

Sec. d. THE SUPREME COURT SHALL BY GENERAL RULES ESTABLISH, MODIFY, AMEND AND SIMPLIFY THE PRACTICE AND PROCEDURE IN ALL COURTS IN THE STATE, IT BEING PROVIDED THAT WHERE THERE IS A CONFLICT BETWEEN SUPREME COURT RULE AND A STATUTE CONCERNING EVIDENCE OR SUBSTANTIVE LAW THE STATUTE SHALL PREVAIL. THE DISTINCTIONS BETWEEN LAW AND EQUITY PROCEEDING SHALL, AS FAR AS PRACTICABLE, BE ABOLISHED. THE OFFICE OF MASTER IN CHANCERY IS PROHIBITED.

Sec. e. DECISIONS OF THE SUPREME COURT, INCLUDING ALL DECISIONS ON PREROGATIVE WRITS, SHALL BE IN WRITING AND SHALL CONTAIN A CONCISE STATEMENT OF THE FACTS AND REASONS FOR EACH DECISION AND DENIAL OF LEAVE FOR APPEAL. WHEN A JUDGE DISSENTS IN WHOLE OR IN PART HE SHALL GIVE IN WRITING THE REASONS FOR HIS DISSENT.

Following is minority report B to Committee Proposal 91 as offered and the reasons submitted in support thereof:

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski, a minority of the Committee on judicial branch, submit the following minority report to Committee Proposal 91:

A minority of the committee recommends that the following be excluded from the constitution:

Section g, beginning on line 25, page 2.

Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski, a minority of the committee on judicial branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 91:

The purpose of the minority report is to eliminate all of section g, which contains the plan for "balkanizing" the supreme court by establishing districts for the election of judges to replace the present system of election on an at large basis. It is the belief of the proponents of this minority report that the present system wherein the election of supreme court justices is on a statewide nonpartisan basis, has worked very well in our state.

The legislature has provided a system of nomination and election under the 1908 constitution which has worked very well in the state of Michigan. By removing the language contained in section g, the legislature would have the power to revise the present procedure to meet changing needs of the state and devise the best possible system: Provided however, That election of supreme court judges would be on a statewide, nonpartisan basis.

The state bar committee on court administration, consisting of 42 members headed by Judge Noel P. Fox, recommended in 1961 in its report to the state bar that "the present system of nominating and electing supreme court justices be retained, the same provisions to apply to judges of an intermediate court of appeals, if the latter court be established by the constitution".

The district plan for election of supreme court justices would result in disenfranchising a majority of the electors in the state from voting for all of the judges exercising statewide power and jurisdiction. It is difficult to conceive of any principle which would limit a supreme court justice's opinions and point of view to a particular district of the state rather than to the state as a whole. The district plan would strongly tend to inject sectionalism into the opinions and decisions of the court.

In conclusion, the proponents of this minority report believe, after listening to testimony by representatives of the bench and bar throughout the state and at all levels, as well as representatives from the bar associations of other states, that our present system for selection of supreme court justices is far superior to any alternative plan presented before our committee.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

[Section a was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: The Chair would inquire of the chairman of the committee: is it your desire that we take this proposal up section by section?

MR. DANHOF: It is, sir.

CHAIRMAN VAN DUSEN: The Chair recognizes the chairman of the committee, Mr. Danhof, with respect to section a of Committee Proposal 91.

MR. DANHOF: Mr. Chairman, members of the committee, section a sets up a supreme court of 9 justices, one more than we have now. It provides that they shall be elected by the electors of the state, the term to be 8 years and not more than 3 terms shall expire at the same time.

I should like to point out that section a is tied inexorably to section g of Committee Proposal 91, section g being the majority report of the committee concerning the selection of the supreme court.

The majority report is that the justices shall be elected from various districts as are set forth in section g. I would point out to the committee that it will be necessarily determined that if section g is adopted by the majority of this committee, then section a should go with it in order that there be a logical number to fit the various districts that have been proposed by the majority of the committee.

I would, therefore, recommend and move that at this time the provision and the matter relating to section a be passed until we get to section g and have determined the method and the selection and that we then return, after consideration of section g, to the provisions of section a and I so move.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Danhof that further consideration of section a be postponed until following consideration of section g of the proposal. Mr. Ford.

VICE PRESIDENT ROMNEY: Without objection, it is so ordered.

SECRETARY CHASE: That is all of the items on the desk at this time, Mr. President.

VICE PRESIDENT ROMNEY: Delegate Lesinski.

MR. LESINSKI: Mr. President, I move that the convention now adjourn.

VICE PRESIDENT ROMNEY: You have heard the motion. Those in favor say aye. Opposed?

The motion prevails. We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 10:10 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, February 27, 1962.]

EIGHTY-EIGHTH DAY

Tuesday, February 27, 1962, 9:30 a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by one of our own delegates, Leslie Richards, from Marquette county.

MR. RICHARDS: Let us pray. Almighty God, Thou hast taught us that in quietness of prayer, Thou shalt be our guide. Help us to know that Thou art always with us. As our purpose is to help our fellowmen and to promote all that is good in the life of our state, so we pray that Thou wilt strengthen our hands in all our undertakings. O God, who dost hold us to account for the use of our powers and privileges, guide, we pray Thee, the delegates of this convention, that by wise legislation and administration the rights of all the people will be protected and our state enabled to fulfill its purposes. Grant to us the spiritual gifts of understanding and wisdom, of strength and counsel, that we might uphold what is right and follow what is true. Save us from discord and confusion, from pride and arrogancy, and fashion us into one united group. Exercise our minds to meet our responsibilities and endue us with Thy wisdom. Deliver us from putting selfish, private interests or concerns above public welfare. We know, our Father, that at this important hour we need Thee. We need Thy strength, Thy guidance, Thy wisdom. There are always problems far greater than the wisdom of man can ever solve. May these responsibilities lie heavily upon our hearts. Give to us honesty, courage, and the moral integrity of doing that which is best and right. Bless this state we love so much, and may the work of our hands and minds the past few months brings to our state a constitution that will bring to the people a real sense of well being, fairness, sound security and peace of mind. Purify our intentions, strengthen our purposes and grant that in serving our fellowmen we may serve Thee. Through the name of Jesus Christ our Lord we pray. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present please vote aye. Have you all recorded your presence? If so, the secretary will record the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. Baginski, from today's session; and Miss Hart, indefinitely, due to illness.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, in regard to Judge Mosier, I would like to state that yesterday I received a telegram to the effect that he was ill, and I assume this is the case today. I would request that he be placed on indefinite leave.

PRESIDENT NISBET: Thank you, Mr. Danhof. Without objection, the requests for leave are granted.

SECRETARY CHASE: Absent with leave: Mr. Baginski, Miss Hart, Messrs. Heideman, Karn, Mosier, Perras, Rood and Yeager.

Absent without leave: Mr. Habermehl.

PRESIDENT NISBET: Without objection, Mr. Habermehl is excused.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Habermehl, Karn, Rood and Yeager.]

Reports of standing committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Select committees.

SECRETARY CHASE: No select committee reports.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading.

SECRETARY CHASE: Nothing on that calendar today.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order and the secretary will read.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 91, A** proposal pertaining to the supreme court.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1300.

[Section g was read by the secretary. For text, see above, page 1256.]

CHAIRMAN VAN DUSEN: For an explanation of the section, the Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, to explain the majority position of the committee and the report of the committee on this particular section, I should like to yield at this time to the delegate from Hillsdale, Mr. Prettie.

CHAIRMAN VAN DUSEN: The Chair recognizes the delegate from Hillsdale, Mr. Prettie.

MR. PRETTIE: Mr. Chairman and fellow delegates, in this presentation I do not propose to read either section g of Committee Proposal 91, which the secretary has just read to you, nor the report of the committee in support of it. I shall assume that you have all read these. If you have not, the proposal is before you, and is published in the journal at page 465, and the report begins at page 467.

I do want to highlight some of the developments of the past 6 months that have resulted in the presentation of this proposal for your consideration, and may I say it is submitted in all sincerity. Several members of our committee, as well as lawyers statewide have long been concerned with the flagrant inconsistency of our supreme court justices being nominated at party conventions and then, so to speak, taking a bath and running as nonpartisan candidates for this high office. It was obvious that some correction of this anomaly was necessary if the integrity of this court was to be preserved and public respect for it maintained. Such an inconsistency, I believe—and I think many join me in this—reflects at the very outset upon the integrity and the honesty and the political acumen of every candidate for this high office.

Before this convention met, several delegates, who later became members of our committee on the judicial branch, corresponded between themselves on this subject, and they had the benefit of the advice and counsel of then and now members of the supreme court. Later, when these delegates to whom I have referred were appointed as members of the committee on judicial branch, we found ourselves and the entire committee faced with several possible solutions to this dilemma. Some of them were Hobson's choice.

If you refer to the material projected on the wall that will be before you as I discuss this matter, our choices were between some appointive method, providing either for the appointment of justices of the supreme court by the governor, with the advice and consent of the senate, or from a list of qualified appointees submitted in accordance with the so called Missouri plan. A second choice was a continuance of the present provisions of section 23 of article VII, as implemented by statute, which results, as I mentioned, in partisan nomination of justices followed by "nonpartisan" statewide election. A third choice is a constitutional change or a direction to the legislature to provide for statewide nonpartisan primary, followed by statewide nonpartisan election; or, in the alternative, a statewide partisan primary followed by a statewide partisan election. A fourth possible choice, and the one that we have before you, a plan for election of justices of the supreme court from areas within the state so arranged as to be as nearly equal as possible in population and availability of qualified candidates. Now I wish you would keep these choices before you as we consider some further matters.

As early as October 24, 1961, the general subject of the Missouri or ABA plan was vigorously advocated before our committee. John Manning, writing on the editorial page of The Detroit Free Press on November 1, 1961, said:

> Last week at the constitutional convention, certain representatives of the state bar association resumed their argument in favor of the Missouri plan for making judges. Under it the public has virtually no say. A tight little committee of attorneys and laymen would tag a list of judicial nominees and the governor would pick appointees from this sacred list.
>
> Delegate K. G. Prettie of Hillsdale demanded of Professor Charles W. Joiner, a convention codirector of research, "Do you feel there is something so sacrosanct about the courts that we should treat them differently from other public offices?"

Then the article went on to comment favorably upon the general principle of election as opposed to appointment on any basis of members of this high court.

This favorable press reaction to election as distinguished from appointment of our judiciary encouraged certain members of our committee to discard the Missouri plan, and on November 7, 1961, Delegate Proposal 1218 was introduced, joined in by 6 members of our committee, including 3 former circuit judges of this state, and proposed a district plan for nonpartisan election of members of the supreme court. On December 1, 1961, this plan was further refined and included as a part of a complete judicial article as Delegate Proposal 1488, which you have all had on your desks for months. In the meantime our committee was hearing testimony from scores of witnesses on every phase of the judicial article, including the subject of judicial selection and tenure as bearing upon the 4 choices, the subdivisions that you have before you.

May I share with you some of this testimony? And I have to apologize for reading it because I wish to quote it with ultimate accuracy. On November 8, 1961, Justice Eugene Black appeared as a witness before our committee, made a rather lengthy statement and then answered questions for some considerable period of time. One of these questions was:

> Wouldn't the election of supreme court justices on a district basis be advisable for these reasons? Areas wouldn't be so large that the people would not be acquainted with candidates, and it would also eliminate the strenuous campaign ordinarily being statewide. What is your thinking?

End of the question. Then the answer:

> The plan that you are talking about is one that Judge Pugsley has labored with me on for months and months back. I think it is wonderful. I think it would be a step forward as the nominating system and elective system would normally be separated from party politics, and it has this advantage: it takes less time to campaign in a limited district and, if you are a money spender, it would take a lot less money to campaign in a limited district. I do not believe in the appointment of a judge to a judicial position for any length of time.

Then the question:

> If we adopt the district system, would the district represent a like number of voters or like area?

And the answer was:

> I would like to see them represent a series of districts composed in such a way that every man's vote has equal value.

End of quote, and end of that portion of Justice Black's testimony.

On November 9, 1962, Justice Theodore Souris made a very helpful presentation to our committee in connection with the establishment of appellate courts, and those appellate courts he suggested be established by districts, and submitted maps, in which regard he testified. His testimony is rather lengthy, but I submit to you that it is so important on this matter of these choices before you that I ask you to bear with me in reading it. He testified, "I suggest that it might be desirable to have intermediate appellate judges elected from the districts within which they would be working." In answer to questions he testified:

> I say to you that where you have a whole state from which to select your nominees at a particular moment it may be necessary to make a selection, it may be desirable to make a selection from a particular area.

He was asked the question:

> What is your view of the federal appointive system? Do you think that this has resulted in less than adequate judges on the federal bench?

And he answered:

> I prefer the caliber of judges we obtain in Michigan at our circuit court level and at our supreme court level over the caliber of judges we obtain in our federal district court and circuit court of appeals level all over the country.

In his formal statement to the committee Justice Souris spoke strongly against any appointive system, saying:

> The people's right to vote for their judiciary should not be taken away from them any more than there should be taken away from the people their right to vote for those who enact the laws or those who enforce them. Once anyone assumes a special capacity for selection of superior judges, it must necessarily follow that they or others like

them possess a special capacity for selecting, in place of public election, the governor and our legislators. No thoughtful student of American government would go so far. It's bewildering to me to discover that some thoughtful citizens apparently are seriously considering the unconditional surrender of the elective franchise as it relates to the judiciary.

End of Justice Souris' testimony.

Justice George Edwards, in a prepared statement on November 1, 1961, advocating a statewide elective system, testified at some length. In his prepared statement he said:

Election of judges has been a basic part of the American tradition since the revolution. Most state judicial systems provide for an elected judiciary. In Michigan our state judicial system has been elective since 1837, when Michigan became a state.

During all of its history, the Michigan judiciary has been of high repute in the state and the nation. No major scandal has besmirched its record. Its record for disposition of litigation compares very favorably with the records of sister states.

Michigan's present electoral provisions relating to the judiciary provide for independence of the judiciary. At the same time, this constitutional article would preserve to the people the right of election of their judges. By requiring judges periodically to report to the people who are the source of their power which they wield on the bench, some tendency is created toward restraint of possible judicial arrogance.

And I think in the past few days, parenthetically, we have had some indication here of what has been termed judicial arrogance. To return to Justice Edwards' testimony:

While relatively few incumbent judges have been defeated for reelection, the people have had a remedy when a clearcut need was presented.

The suggestion that election of judges should be removed from the hands of the people and placed in the hands of a select committee I regard as having little merit. The argument of the advocates of this plan is that it will serve to remove the judiciary from politics. In reality, the plan means that open political consideration of the judicial nominations is replaced by a few men in wholly private meetings.

The people of this state have never exhibited any desire at all to abandon their right to elect their judges. I would think it most unwise to draft a constitution for presentation to the people which did not retain an elective judiciary for the state of Michigan.

Justice Dethmers, who was one of the few witnesses appearing before our committee testifying in favor of the Missouri plan, of group selection or nomination, rather, and then appointment, broadcast over channel 10 TV on November 20, 1961, and among other things Justice Dethmers said:

It has been demonstrated that people don't know much about who the candidates are for the supreme court, and so they cast their votes, a majority of them, for a name candidate, who perhaps may have been governor or secretary of state, or something like that.

He went on to say:

Now, what is it that the people are entitled to in a judge or in a supreme court justice? Well, I submit that they are entitled to—what they are entitled to is independence, impartial judges who are not influenced in any way by party obligations or influence of pressure groups. Now, I am submitting that when you have to be nominated by a party, and then have to have party support to be reelected, it takes good, strong character to resist the memory or the realization of that fact.

Justice Paul Adams also appeared before us and favored the present status quo with its inconsistency, and opposed the Missouri plan. I am only going to give a very brief excerpt of very fine and extensive and helpful testimony that Justice Adams gave us. He said:

I strongly advocate the election of judges and justices. There are two important aspects of this process. First is the participation by the people in their government. Second, and equally important, is the effect running for election has on the candidate himself. There is no other way for our officials, the representatives of the people, in whatever branch of government, to get close to the people and to understand their needs except by submitting themselves to the people and seeking their support.

Judge Michael Carland, president of the Michigan judges association currently, on November 16, 1961, testified in part:

We are opposed to any plan which takes from the people the right to elect their own judges. The suggested election of supreme court justices by districts may be the answer, and seems to have merit, but only if elected upon a nonpartisan basis.

Judge Noel Fox appeared as a witness on November 14, 1961, and submitted the report of the citizens advisory committee of which he was chairman. This committee recommended that the present inconsistent method of nomination and election be retained, but this report rejects any appointive plan and states at page 29 of the little booklet you all have:

This constitutional article should preserve to the people the right of election of their judges. The suggestion that election of judges should be removed from the hands of the people and placed in the hands of a select committee is regarded as having little merit.

Now our committee felt that this district plan was perhaps somewhat novel; certainly new to Michigan, but we learned that it was not unique, that it exists in other states, and it exists in our neighboring state of Illinois. Recently that state revised its constitution, and in that revision it retained the district election of its supreme court judges. We therefore invited, as a witness before our committee, Mr. Albert Jenner of Chicago, a past president of the Illinois bar association. He testified on December 7, 1961, to the following question:

Do you find that the election of the supreme court justices on the district basis has any tendency to polarize or balkanize those judges in their thoughts on the supreme court?

This answer:

No. I can say this after 31 years of practicing law, and I am a litigation lawyer, and have been in that court a 150 times. It has not balkanized those judges at all.

Then the question:

Do you find that the election of these justices of the supreme court on a district basis has a tendency to encourage better lawyers to run for office?

And his answer was:

Very much so. First, let us take campaign expenses. For a judge to really campaign throughout the state of Illinois is a tough job. It costs a minimum of $45,000 to $50,000; an absolute minimum.

Now I could share with you, fellow delegates, a great deal of additional testimony before our committee taken over the 3 months we deliberated this matter, but this should suffice to give you the general purport of what we heard.

Following this extensive testimony we took a first vote on substantive matters in our committee on January 16, 1962, and that vote was on the proposition as to how many of our 21 members favored an appointive as against an elective system. The vote resulted in that 18 opposed appointment, 1 favored it and 2 were absent. On the same date we voted specifically on the Missouri plan. Fifteen opposed it, 3 were in favor of it, and 3 were absent or abstained. This vote eliminated from our consideration any appointive method, and left us faced with the second, third and fourth choices and their subdivisions appearing on the wall before you.

A continuance of the existing inconsistency was unthinkable in view of the testimony of which I have given you excerpts, and that eliminated choice 2. Much testimony had convinced us that the difficulty and expense of statewide partisan or nonpartisan elections was an insupportable burden beyond anything that would attract competent members of the judiciary. This ruled out choice 3. The group within our committee, therefore, continued to work toward further perfection of the

district plan, which was finally revised on January 25, 1962, so that it looked like this — if I may have the next projection. There. This map is very similar to the one that has been distributed to you and outlines the areas and the boundaries of these districts, which are in correspondence with the boundaries of existing circuits so that they correspond with the general judicial structure. I think it is quite impossible for you to see the figures in the upper right hand corner of the board. It's possible it could be moved down just a little bit lower.

In carrying out the desire of those who sponsor this proposal for as nearly as possible equal distribution of population throughout the state, a division was made which establishes Wayne county as one judicial district, entitled to elect 3 justices, and with a population of some 888,000 persons per justice. Oakland county is somewhat smaller than 1/9 of the state, but this was purposely so because of the projection figures for 1970 population that would indicate substantial growth. The other areas of the state range, as you can see from the chart — and you have had these in your hands for over a month — from a low of some 815,000 to a high of some 990,000.

Now another problem that concerned us was the legal population of the state and the availability of competent legal talent on a statewide basis and on a district basis, and if we may now have the next projection, which is a projection of figures also appearing in your journal, this tabulation will illustrate the thoroughly constant proportion of lawyers to population in each of the proposed judicial districts. I think the low is 520 lawyers in the judicial district 4, ranging up to 767 in judicial district 5, and with 4200 in Wayne county. But from that there would be selected, as the years go on, 3 members of this high court. In making this tabulation, the source of which was figures from the state bar of Michigan, I endeavored in Wayne county, at least, and also in Ingham county, to eliminate those who could be clearly identified from legal rosters as public officials, house members and law professors, but these tabulations in all instances must necessarily include some retired, inactive practitioners and members of the judiciary.

On January 25 there was submitted to every member of this convention a draft of this plan with reasons in support of it much the same as those appearing in your journal. A request was made for any objections or criticisms or suggestions for improving it, and with a request that each delegate return an indication of his thinking on this plan. As a result of this, one letter was received urging a completely appointive plan; one letter vigorously opposed the plan, and I will discuss this later in greater detail. Twenty marked ballots were received, of which 14 favored the district plan. While the return of the questionnaires was disappointingly small, it was no smaller than the percentage of votes by which most of us hold our seats in this convention. In any event, it indicated some substantial majority in favor of the plan, and encouraged those who had been working upon it for months to go ahead further with its perfection and presentation.

I should point out further that while this plan was under consideration, the state bar of Michigan conducted a poll of its membership. The results of this were received on January 10, and have been duplicated and distributed to you. Even without the details of the district plan before them, because it had not been finalized when this questionnaire was prepared on December 20, if you will refer to page 2 of these questionnaires, you will see under question 3c that if the court be elected, 1442, or 36 per cent of the lawyers expressing a view felt that a regional basis should be advisable, and this was somewhat a matter of buying a pig in a poke, because the details were not before them. Although the point will be made that on page 1 of this questionnaire there is an indication that out of 4903 lawyers some 2500 favored the Missouri plan, in evaluating this questionnaire — and this fact was very vigorously brought out by Mr. Ford in our committee — the circumstances under which that poll was taken must be given consideration. To every lawyer in the state, and concurrently with the distribution of that questionnaire, were delivered 2 separate pieces of literature favoring the Missouri plan. One of them starts out with the catch line "A once in a lifetime opportunity," and the other one starts out "Arise and be heard." These questionnaires were returned with that kind of solicitation at the ballot box, if you please, before the lawyers of the state, and I think the result of it must be evaluated with that in mind.

I do not wish to repeat the argument submitted in the report in support of this plan. These were furnished to each delegate on January 25, and are spelled out in detail on page 468 of the journal. I might say that one feature which wasn't mentioned in those arguments, and which I think is a very important one, is that such a plan as this would provide for an orderly progression through competent lawyers to positions on our circuit bench, through that, hopefully, to positions on the bench of our intermediate court of appeals, if and when established, and, hopefully, from that on to the high bench.

Now, I said I wanted to deal briefly—and I will try to be brief in the presentation of it—with some of the criticisms that have been leveled against this plan. First, the catch phrase or the cliche that this is a balkanizing of the court. I submit this has no real validity. The argument entirely overlooks the fact that our circuit judges now preside in courts throughout the state. They are, of course, elected in their own individual circuits. No one has ever claimed—certainly they haven't claimed with any justification—that this resulted in any parochialization of the thinking of our circuit judges. They have administered justice with an even hand regardless of where they reside or the location of the court in which they preside. Many of those judges who are delegates here presided in many of the courts of this state, and the fact that they came from Harrisville or Oceana county, or some other county, Bay county, didn't influence their decision when they were sitting in Wayne or elsewhere in the state.

Furthermore, Justice Souris himself suggested that the proposed court of appeals be established on a district basis and that the judges thereof be elected from the districts so established, although they would be empowered to sit and hear cases in any district in the state. If this does not balkanize the appellate court why should it be claimed that district selectives of the supreme court justices would balkanize that court? I mentioned earlier there had been distributed to you within the past 2 or 3 days a map much the same as the one on the wall, but containing the names and terms of service of 29 justices of the supreme court who have served this court within the past 30 years. I made a little analysis of that, and 7 of these judges came from district 1. Seven of them also came from district 6, and the Grand Rapids area. Three each came from districts 3, 4 and 5, only 1 came from Oakland county in that entire 30 years, and 5 came from the upper part of the lower peninsula and the upper peninsula, what would be district 7 under the plan as suggested.

So, if the court has not been balkanized by the distribution, perhaps by accident, resulting from partisan nominations over the past years, I don't think a planned method of distribution of the selection of our talent would be in any wise more of a balkanizing effect. Now, I prepared a chart, which is on the screen, of the present membership of our supreme court, and you will note that it comes from 5 of the districts now proposed. It cannot be contended with any validity that the distribution of our present justices from various parts of the state results in a parochial attitude on the part of the membership of that high court. Justice is, and I submit has always been, administered with a view to the law in the state as a whole. There was no evidence before our committee that election on a district basis in Illinois resulted in a balkanization of that state. In fact, the testimony of Mr. Jenner was exactly to the contrary.

Now, by reason of the imminent retirement of Justice Carr at the end of his present term beginning January, 1964, there will be a change in the court. Taking this into account, and if the district plan be adopted, then the personnel of the court, subject to reelection, would be as shown on this projection. This assumes the creation of the 9 judicial districts proposed

in the plan. It will be noted that there would be one vacancy from district 1, and there may be some question concerning Justice Kelly, who I think now is a resident of Otsego, but under the plan he could run from the Detroit area where he has historically lived, or choose district 7, if he so desires. There would certainly be one vacancy from judicial district 1. There would be a vacancy from judicial district 2. Justice Smith would represent his home district, district 3; Justice Black is district — Port Huron and the area — 4; Justice Kavanagh, now a resident of Lansing; Justice Dethmers is presently a resident of Lansing, but his origins were in Holland, and he, under the plan, would have the choice of running there; and Justice Adams representing district 7.

On February 14 there was distributed to every delegate here a letter from the league of women voters stating their views as to what we should do here. This well meaning group of some 3700 interested citizens stated that this plan "opens the highest court in the state to unwholesome partisan and sectional pressures." Partisan pressure is exactly what they are trying to avoid. Sectional pressures, I submit, do not exist. We have had no evidence of it in the years that sections have been represented on our high court. It is further stated in this letter that the supreme court must serve all Michigan people equally and impartially. Whoever said that it does not? As I pointed out, although the justices now and always have come from various parts of the state, as shown by the map I referred to a moment ago, they have administered even handed justice on a statewide basis. And, finally, the league of women voters urges us to ease the voters' job by providing for original appointment. My answer is: this doesn't ease the voters' job, it destroys it.

The argument is made that the state's keenest legal minds are to be found among Wayne county lawyers. There are among this delegation 6 retired circuit judges who have presided in Wayne county and elsewhere throughout the state. I hope they will take this floor and tell you, as they have told me, that there is no monopoly of legal knowledge in this state nor in any county of this state. The map that you have negatives this fact. There has been a fair distribution of membership on our high court throughout the state over at least the past 30 years, and I think the analysis might be extended for many years back of that.

Now just a word about the minority report appearing on pages 579 and 580 of the journal. To me it does not seem to be constructive; it merely proposes the elimination from the constitution of section g of this committee proposal. I am not certain where this would leave us, for the committee has filed Exclusion Report 2043, recommending exclusion of the entire judicial article, now section 23 of article VII. I believe that it is the intent of the minority report to include in Committee Proposal 96 a continuance of the status quo. But I think we have already discussed that sufficiently.

The most recent criticism that has come to my attention is an editorial in one of our state's metropolitan dailies. It is a constant source of wonder to me that the writers of these editorials, without hearing any witnesses, and without considering all sides to any question, suddenly become experts. Let us look at this editorial. The editor states, "We have no great love for the present system, especially its nomination to a nonpartisan court by party conventions." Later they state, "There is no point in plugging for a modified Missouri plan. It's politically dead." By these statements 2 of our possible alternatives have been eliminated. The editorial then criticizes the district plan because, they say, it is a situation tailor made for name candidates or pressure group favorites. This certainly is not true in the major part of the state where circuit judges and competent lawyers are known to their constituents for their character alone. Another criticism, "Highly qualified men may be shut out in his own district while mediocrity turns out to be the best to be found in the next district." History has shown that competent jurists can and have been found and have served with credit on this court from every area of the state. And, finally, in this editorial the point is made, "Sectionalism should have no place in deciding statewide questions of law." I think I have already dealt with that sufficiently. The historic geographical distribution of members of our court has never resulted in sectionalism, and the continuance of statewide distribution of personnel will not, I submit, result in any sectionalism in the future. After reading this editorial yesterday, it seems to me clear that the writer is against practically every plan that has been proposed, but it certainly is not clear to my mind what he favors, and that is the problem we have here to decide.

Two or 3 final details should be outlined. These are found toward the end of Committee Proposal 91g, lines 14 to 21. It provides for readjustment of these districts by the legislature as population changes may require, but such readjustment should not result in the removal or disqualification of an incumbent judge for election or reelection. The proposal makes existing election laws applicable to all primaries and elections for justices of the supreme court. It continues in office incumbent justices without regard to place of residence, and permits their reelection similarly without regard to place of residence. It empowers the legislature to provide for transition from present methods of election to the method provided in the proposal.

Now, before someone else mentions it, I should state to you, in all frankness, that this proposal was reported out of the committee on judicial branch by only 11 votes, with 5 opposed and 5 absent or abstaining. I would further point out, however, that it was the only proposal that obtained a majority vote in the committee, and that the plans for appointment, as I discussed very early in this presentation, were opposed by an overwhelming majority. I submit that this district plan, coupled with our established precedent of nonpartisan election, will secure for this state a supreme court of the highest caliber; will attract as candidates the most competent lawyers from all over the state; will make members of the judiciary known to the voters who elect them, and will result in a truly nonpartisan court without the inconsistency of party nomination followed by so called nonpartisan election.

CHAIRMAN VAN DUSEN: Mr. Danhof, do you have — Mr. Danhof is not present. Mr. Ford, does the committee have further presentation with respect to section g?

MR. FORD: In the absence of Mr. Danhof, I would like to yield the floor, if I may, Mr. Chairman, to Judge Leibrand.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and fellow delegates, after listening to the able presentation of the position of the committee on district election of judges, most anything that I might say would fall very flat, indeed. I do think, however, that perhaps it would be helpful to the delegates if I gave a brief review of the history of Michigan's judicial system.

Michigan's first constitution was drafted in 1835, prior to the admission of Michigan as a state of the union. Following the plan that had been in effect during the territorial days, judges were appointed by the governor with the advice and consent of the new state senate. It took only 15 years for the people of the state of Michigan to have a belly full of that system. In 1850, when they drafted their new constitution, they provided for the election of judges. Now, that election under the 1850 constitution was by a partisan system, by conventions, state conventions and county conventions, but it was, fellow delegates, election. That election continued from 1850 until the Constitution of 1908, with 58 years experience. And again the drafters of the Constitution of 1908 provided for an elective system, for the election of supreme court, circuit court and probate court judges. They continued on this party system, which was the only real system which was known then not only in Michigan but in other states. By the year 1939 the people of the state of Michigan had had their fill of partisan elections. For 89 years they had experience with them, and they decided that they could improve the judicial system by placing the election of judges on a nonpartisan basis.

By initiative petition, not through the political parties, not through the legislature, but their own initiative petitions, there was placed on the ballot in 1939 a measure which was designed to make the election of judges truly nonpartisan. I don't have the figures before me, but my memory is that that initiative proposition carried by a vote of something like 375,000 to

240,000. And I say to you members of the convention, and I have mentioned this before, it isn't so bad to try to tinker with provisions that were put into this constitution by the Convention of 1908, but when you start to tinker with any proposition which has been put into the constitution by the people, particularly by a large vote, we are treading on awful thin ice.

Going back to this 1939 nonpartisan amendment, initiative amendment, that provided for the complete 100 per cent nonpartisan nomination and election of probate judges and circuit judges in their counties and districts, nomination by nonpartisan petition, election on nonpartisan ballots, when the favorers of the initiative amendment got to the supreme court, and how to handle that, they ran into trouble. They knew, as well as we know today, that it was a very, very difficult proposition for a lone nonpartisan candidate to campaign the entire state of Michigan, and to carry the campaign costs, the expenses that were incident to that. So the framers of that initiative amendment did what we are doing here in this convention with many matters for which they could find no solution. They passed the buck to the legislature, and they said the nonpartisan nomination — the nomination, not nonpartisan, but the nomination for justices of the supreme court shall be made in such manner as is provided by the legislature. And the legislature had as much trouble with that proposition as had the framers of the initiative amendment. And so the legislature came up with this proposition of nomination at party conventions and election statewide on nonpartisan ballots; the proposition, as Delegate Prettie says, of going into a convention with your hat in hand to get a nomination and then taking a bath and starting out around the state claiming you are pure, white and free from any political taint.

Now, I've campaigned. I say to you that this provision, this system we have for nominating justices of the supreme court, and which will be in effect for the nomination of justices of the appellate court, is decidedly unpopular with the people. My district is about 100 miles wide — 100 miles long and about 30 or 40 miles wide, and I campaigned that district intensively for about 3 months, and I appeared at dozens and dozens of meetings and dozens and dozens of debates, and as I did so I found considerable concern about the Michigan supreme court and the method of nomination of its members, and what the folks in my audiences and the folks who asked me questions were concerned with was not how to transform this into an appointive system — not once out of these dozens of meetings, out of these hundreds or thousands of questions, did I hear one single suggestion that the nomination and the election of the Michigan supreme court should be done by appointment. The questions I did hear and the suggestions I did get were that this convention should settle down to do something that made the judiciary of Michigan truly nonpartisan. I believe, members of the committee, that that is what the people want. I don't believe they want an appointive system. I don't believe they want the hybrid system that they have now.

Thirty-seven out of our 50 states have an elective system. Thirteen out of the 50 have an appointive system. But no one has the kind of a monstrosity that we have been trying to get along with here since the year 1939.

Mention has been made of an editorial appearing in the Detroit — my fellow delegates said a metropolitan paper. I'll call the names — The Detroit News, dated February 26. I hope you all read that. And then after you have read it, I hope you compare it with an editorial in the State Journal of November 19, 1961. Now, I submit to you that since we have been assembled in the convention here there have been numerous criticisms about the accuracy and the positions taken by the metropolitan papers. I submit to you that since we have been in convention most of us have been reading for the first time regularly the State Journal published here in Lansing. I am not a stockholder in the State Journal, but I say to you that I feel that the reporting in the State Journal and in the Booth newspapers is so far superior to the reporting in the metropolitan dailies, there is no comparison. I want to read you this editorial from the State Journal, which gives you the other side of the question, and then I will be done. The title of this editorial is, "Sham Should Be Eliminated."

> Some changes in the Michigan supreme court system are almost certain to be written into the new constitution proposal being drafted by the constitutional convention. A parade of witnesses already have been heard on the supreme court issue, and although there has been no unanimity on what should be done, most of the witnesses, including a number of supreme court justices, have expressed themselves as to the need for revision.
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> Under present law Michigan's 8 man court is selected in staggered terms of 8 years; 2 justices elected every other year. Theoretically the justices are elected on a nonpartisan basis, but the only thing nonpartisan about it is the official designation. The justices not only are nominated by party conventions, but they tour the campaign circuit with party nominees for other elective offices, and their campaign expenses are at least partly paid by party campaign funds.
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> This sham should be eliminated. The justices should either be elected on a truly nonpartisan basis, without political party strings, or they should be elected on a partisan basis, and their political party made responsible for their action. The ideal arrangement would be to elect supreme court justices on a nonpartisan basis with neither the political parties nor the governor nor the legal profession —

and I emphasize this with special reference to the American bar association or the Missouri plan —

> nor the legal profession determining who shall be nominated or who shall be barred from nomination.
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> The difficulty of this procedure is the element of cost, since supreme court justices hold state offices, the cost involved in conducting statewide campaigns in both primary and general elections can be considerable; so great, in fact, that many capable jurists would be precluded from office because they could not afford the expense of the election campaign. Obviously no one wants a supreme court packed with millionaires.
>
> One proposal that had been suggested to meet this problem is the election of supreme court justices by districts. Thus a candidate for the high court would not have to campaign throughout the state, but only in his particular district.
>
> This solution to the cost problem also would remove another thorn that bothers a lot of people in the state of Michigan; that is the problem of preventing 1 political party or 1 pressure group with a potent political machine from grabbing control of the supreme court. If this should happen, and it could, the judicial system of Michigan would lose its integrity. A truly nonpartisan supreme court with justices elected from separate districts would reduce political pressures on the state's highest court, and would guarantee equitable representation for all citizens of Michigan.
>
> The supreme court should have an uneven number of justices; not 8 as now, but either 7 or 9, so there would be no votes on split decisions.

Mr. Chairman and delegates, I support the remarks of delegate Prettie, and support the adoption of the majority report on the district system. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie, the Chair believes you had retained the floor. Do you have further presentation?

MR. PRETTIE: Mr. Danhof has now returned to the floor. I yield the floor to him.

CHAIRMAN VAN DUSEN: The Chair recognizes the chairman of the committee, Mr. Danhof.

MR. DANHOF: At this time I would like to yield to a member of the committee, Mr. Iverson.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, my remarks are going to be really brief, because I think this matter has been so ably presented by 2 previous speakers that it is unnecessary for me to enlarge upon it, except that I want to make a few remarks.

I go back perhaps 8 or 10 years when the bar association, the American bar association, I believe, first started action upon the so called appointive system of judges, and I must confess that for a short period of time at least, I was rather impressed with this system because I think as lawyers we are primarily interested in seeing that our courts are free from political pressures or other pressures, if you please, and I believe I was almost sold on the so called ABA plan. And I must make another confession; that about the same time I was a little discouraged about the jury system, and I had some ideas in my mind that perhaps that could be improved by some professionals, perhaps, sitting as jurors, or perhaps a bank of judges. I think all lawyers go through those situations, and I presume this situation was brought about by some immediate case where I felt there was a miscarriage of justice as far as juries were concerned.

Let me say to you now, I have completely changed my mind. Regardless of the fact that sometimes juries, to my way of thinking, do not try a case properly or come up with the right decision, I am still inclined to believe that it is the best system in the world today. I am ready to admit that juries can make errors, just as lawyers or judges can. I am ready to admit that in our system of government there are mistakes made. It is a slow process, and many things could be done for less money and in a quicker way. But I still think that we better retain our present system, regardless of those delays or regardless of the cost, and I think it goes without saying that most of you in this room agree.

As I say, I did feel at one time that perhaps this judicial system could be corrected by appointment of judges, and I presume a few situations occurred in between times where certain judges who were appointed for life became what I considered practically tyrants, and I am not ready to further a system of that kind in this state. Since that time, as I say, I am very much for trusting the people, if you please, to elect our judiciary just as they elect the other 2 branches of the government. Even though in some respects they may not know all the candidates, at least there is a chance that they can be informed, and, generally speaking, over the years they haven't made too many mistakes. I might have disagreed with them politically, perhaps, but that is neither here nor there.

Getting down to this present system, I don't think there is anyone in this room, deep down in their hearts — including the sponsors of the minority report which proposes to maintain the present hybrid system and, I believe, the minority party in this group — but who will agree with me that it is a crime and a sin, and I don't care which party you are in, to place a man in nomination, a lawyer, a reputable lawyer, in a party convention and then throw him to the wolves in a general election. I know whereof I am talking, because of one of the so called nonpartisan campaigns I handled for 2 of the gentlemen who were running for that office — and very capable men, too. Now, I will tell you, it just makes me sick. I don't think that anyone in this room — I don't care what party he belongs to, if he will be true to himself — will agree that the present system is conducive to good justice in this state. I think further than that, that unless we correct this situation we will have the wrath of God brought down on our heads as far as the press is concerned and the people of this state, because I don't think they're going to stand for the maintenance of this present system, and I, for one, am not yet ready to let the legislature make the correction. They have had since 1939, which I believe is about 23 years, and there has been no apparent attempt to do what is necessary to be done to correct the evils in the election of supreme court justices.

I hope you support the committee proposal in this matter, and I believe we will end up with a system of election of justices of the supreme court in the years to come which every one of you will be proud to have participated in.

CHAIRMAN VAN DUSEN: Mr. Danhof, has the committee further presentation with respect to the majority proposal?

MR. DANHOF: No, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the committee will proceed with the consideration of the amendments on the secretary's desk, and the secretary will read the first amendment.

SECRETARY CHASE: Pursuant to the minority report of Messrs. Ford, Garvin, Bledsoe, Miss McGowan, Messrs. Ostrow, Barthwell and Krolikowski,

Mr. Ford offers the following amendment:

1. Amend page 2, line 25, by striking out all of section g.

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes Mr. Ford.

MR. FORD: Mr. Chairman, although I find much to disagree with in what has been said by the previous speakers, I find even more disagreeable the reaction that I have when I stand here and see that we are, in my opinion, debating one of the most important issues to come before this convention, and one that affects everybody in this state intimately and throughout everything they do, and see that we don't have a quorum on the floor. I know it is not a popular thing to start advocating a cause by antagonizing your jury, but it would seem to me that there ought to be a device whereby we can take a recess and then get back here and consider this, and if it would be in order I would like to move that the Chair follow the rule on the 10:30 recess, and we come back to this when we have a better audience.

CHAIRMAN VAN DUSEN: Mr. Ford, a quorum is present. The Chair has just satisfied himself of that fact. The Chair is advised it is the intention of the chairman of the committee to move that the committee rise at approximately 11:30, or shortly thereafter and, therefore, in the discretion of the Chair, he had determined there would be no recess and suggests that the retention of the audience is a matter that is within the province of the speaker. However, in fairness to you, Mr. Ford, the Chair would suggest that the secretary ring the bell. The committtee will be at ease briefly while the bell does its work.

The committee will be in order. For the benefit of those who have just arrived, the secretary was instructed by the Chair to ring the bell because of the apparent absence of full attendance on the floor. The proceedings have reached the point where the minority report is being presented. The secretary will read the amendment offered by the minority, following which we will proceed to its consideration.

SECRETARY CHASE: Mr. Ford, on behalf of the minority, has offered the following amendment:

[The amendment was again read by the secretary. For text, see above.]

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: The minority, in this case consisting of 7 signers, I believe, proposes the elimination of the committee proposal with respect to section g, and I think it should be said at the outset that everything that might be said about the minority attempting in this instance to maintain the status quo should be looked at with some close attention to what is actually happening here. Now, regardless of what your feelings may be about the present system, let's get clear at the outset that this is not a constitutional system we're talking about, basically. We are talking about a statutory system, and all of the things that I have heard criticized about the present system can be changed and could have been changed at any time that our bar association, which is one of the loudest critics, would have had the ambition to go over on capitol hill and talk to the people in the legislature; because all the present constitution requires with respect to the supreme court is simply that the justices be elected on a nonpartisan basis, and that they be nominated in a manner provided by law. The constitution doesn't say that the parties will nominate them at their party conventions. It doesn't say they can't be nominated on a partisan basis, that they can't be nominated by a primary, and, as a matter of fact, Mr. Prettie's entire plan could be implemented by statute without changing the 1908 constitution. There is nothing in Mr. Prettie's plan, as we look at it, that would be inconsistent under the present provisions of the constitution. So what the proposal of the majority is asking you to do is by constitution freeze in for all time a plan that may or may not be better than what we have.

Assuming for the moment the possibility that we ought to try something like this, it would seem that the wisest way to try it would be to try it by statutory change, and if it doesn't work, and if this produces some of the evils that many of us are prone to suspect it of, then the transition back to a system that has been in existence for many years would be rather a quick transition, and could be accomplished before great mischief was done. It is not the request of the minority in asking you to vote against what I refer to as the "balkan plan," to reject it entirely, but merely to reject the idea of building it into the constitution. I submit that even the people who support Mr. Prettie's plan for districting of the supreme court can, in all comfort, support our proposal to remove it from the constitution, and then convince the legislature that this is a good thing on the assumption that if it is tried and it doesn't work, the legislature can correct its error much more readily than we might should we build this into the constitution.

The minority has set out some specific reasons in Journal 76 which you will find for our seeking to strike section g. Primarily it revolves around the fact that everybody on our committee will have to agree that after examining the judicial systems of other states, and listening to the many people who came before our committee, however reluctantly, you ultimately come to the conclusion that although there are improvements that each one of us individually as lawyers might like to suggest, based on a personal experience — for example, Art has had the unhappy experience of campaigning all over the state for 2 very well qualified men who didn't get elected, and this always leaves us unhappy when we have had this kind of experience. And so he would correct this in the manner that appeals to him. I came to the convention, as many other lawyers did, convinced that we had an anomalous situation with the partisan nomination and nonpartisan election that cried out for some sort of a change, but one by one as you examine the alternatives you began to realize that although it took them a long time to evolve the system to the point that it has reached, it is not a bad system.

In supporting the district plan, Mr. Prettie pointed out that we heard from the president of the bar over in Illinois. They have a district plan over there. They have, I believe, 7 judges in their court, and Cook county, which has 60 per cent of the population of the state and 90 per cent of the lawyers, has 1 representative on that court. Now, when we asked the president of the Illinois bar why he thought they should retain a district system — as Ken has indicated to you in their judicial revision they are retaining it — he stated 1 reason directly and he stated another reason indirectly. The reason that he stated directly was that he felt that this protected the state against having its supreme court dominated by the residents of the city of Chicago. Now I submit that this reason is not a valid reason in Michigan. We distributed to all of you the other day a map which shows by indication on the map where the judges of our court have come from in the last 30 years. One of the copies — we gave you 2 maps, and 1 of them has some darker lines on it, and the darker lines show what happens when you superimpose the committee's district plan on top of this, and it will show, as a matter of fact, that the present system has done a little bit better job of distributing judicial talent geographically than Mr. Prettie's plan would do.

Now immediately it is going to be said, because it has been said several times here, that being from Wayne county I should welcome Ken's plan, because only on rare occasion during the past 30 years, or in the history of the court, has Wayne county had the number of judges that he would give us under his plan. I suppose the people who say this to me are proceeding on the assumption that all of us came here to represent the people in our own little provincial area first and the people of the state of Michigan second, and I am not so sure that we haven't demonstrated over and over again here, all of us — and I am as guilty of this as anyone — that this becomes true; that no matter how hard you try to examine these issues objectively you must always come to a conclusion which is based largely on your subjective observations, based on the fact that you come from a part of a state where a particular problem is of more importance than it may be in the other part of the state, and the people in the rural parts of the state cannot be expected to get as exercised about the question of a city income tax down in Wayne county as some of us might. By the same token, there are problems involving the townships, maybe the 15 mill and some other things, that don't excite the people in Wayne county in the same manner that they do the others. This is as it should be in a body such as this, because we are elected on a representative basis, and we are here to put our best foot forward for the people who sent us here. I don't think we should be nearly as sectional in our point of view as the legislature is, because there clearly those people are sent to represent a small group of people, but I submit that our own experience here at the convention should show you how dangerous it is to send people to a court or to a convention to draw an instrument that is supposed to objectively serve the needs of all of the people of the state, but elect them on the basis of representing just a few people in the state.

Mr. Prettie, himself, said the present system distributes judges throughout the state, but sectional pressures haven't resulted from this. Of course it hasn't, because regardless of where a judge comes from in this state, when he writes an opinion or makes a public pronouncement — and of recent years some of the things that have disturbed some of us most are not the decisions coming out of the court, but the public pronouncements that are being made from time to time by members of the court which carry a lot more dignity in the press than they should have in the minds of a lot of attorneys, because it is a member of the court talking. They feel free to criticize almost all facets of government, speaking with the authority that members of the bench have whether they are sitting on the bench or off of it. I am now proceeding with some temerity, because I expect to be back over there shortly, and I trust that the judge or judges we are referring to won't remember this speech.

Mr. Prettie said since we have had the experience of judges being elected from throughout the state, and we have discovered that it hasn't produced sectionalism, we shouldn't fear sectionalism in a district plan. He says sectionalism doesn't really exist; it is something that everybody fears and nobody really believes. But then in his very next comment he said many contend that all of the talented lawyers are down in Wayne county. Now, in all due respect to Mr. Prettie, I don't think for 1 minute that Mr. Prettie doubted that he was touching on a raw nerve with some people, and particularly some of the members of the judiciary here, when he suggested, with tongue in cheek, what some people, unenlightened people for sure, have suggested in the past, that big city lawyers are the ones best qualified to be on that bench. And I am sure that when he suggested it — it may have been automatic — I am sure Ken was acting in good faith. He realized that he was appealing to a certain prejudice that lies in the back of some of our minds here, and, as I said before, I hold no grudge or do not deny the right to have this kind of prejudice in our minds. This is part of what makes a representative body.

He went on to solicit even further this sort of thinking in the convention by suggesting that you could look around the room and see very many eminent gentlemen who, because of the weakness of the present system, had been passed over as potential judicial talent for the supreme court. I happen to agree with him on this, too, but I submit in trying to justify his position he has demonstrated just the kind of subtle sort of pressure that exists when you start talking about sectionalizing anything, and I don't think we have any place for it on a court that writes opinions which are the law for all of the state.

The contrast with the circuit court is a rather absurd contrast, because at the circuit court level, that circuit court is not making decisions that are very often of statewide concern, but the supreme court is almost invariably making decisions that are of statewide concern, and I would hate to suggest the possibility that we might place our court in the position where 3 of them, for example, would only have to be concerned about the popularity of their decisions in a single county, Wayne county, and a fourth one would only have to be concerned about the popularity or public acceptance of his decisions in

Oakland county. And I feel real sorry for the fellow who gets in under district 7 under their plan, because he has to satisfy the people in 48 counties, starting at Bay City and going all the way to the Keweenaw peninsula.

Now you might notice from this map, for example, we have had in the last 30 years 3 judges from the upper peninsula. We have had 7 from Wayne county. As had been stated, only 1 from Oakland county, and we have had 6 from district 6. This brings us around to the second reason that the president of the Illinois bar association had for retaining the district plan in the judicial revision; the one that he didn't like to come right out and say, but the one that was very easily read into his comments, and that was that as a realist who had been fighting as an idealist for many years for judicial revision in Illinois — and anybody who examines their system knows that they need it if anybody needs it — there is nothing in that system that commends it be copied by the state of Michigan, because in every way that you might compare it with our system it is inferior. They fought for many years as a bar association over there for revision, and they finally came to the conclusion that if they were to get any revision at all they had to get something less than a perfect system and something less than a perfect system meant that they were going to have to satisfy the state legislature and the politicians in Illinois that they were not taking away from them the judicial system.

So, admittedly, there are things in the judicial revision proposed for the state of Illinois that the theorists do not believe in entirely, but they feel they have to take it in order to get the other good things, the other gains that are made, and one of the things that the politicians in Illinois absolutely insist on is the retention of the district plan, even though they're going to give Cook county more representation than it now has, because the district plan in Illinois absolutely guarantees for all time, as it would here, a substantial majority of the court coming from the state outside of the heavily populated area. Now, all of us have this in our minds. There is not too much sense in us kidding each other about this being a factor, and there is a political overtone in this plan that is inescapable, and the political overtone is the immediate effect of this on the very next election that occurs. And as one observer, not speaking for my party, not speaking for anyone else but myself, it is my humble opinion that there are at least 3 other judges next coming for election that don't have the chance of the proverbial snowball down below of surviving the election if we go to the district plan, and the sponsors of the district plan well know this.

Mr. Prettie cited the difficulty of statewide elections, cited the comments of bar presidents from other states. He didn't mention, however, the comments of the president of the Minnesota bar, who appeared before us, when he was asked somewhat eagerly, "Don't you agree that it's a terrible burden on a supreme court judge to make him go all over the state campaigning for office?" And without batting an eyelash he looked right back at the questioner and said, "Why no, I don't think it is a burden at all." He said, "I think it's a darn good thing for him to get out and find out what's going on in the state. It makes him a better judge." It has been suggested here a judge might be a better judge if he only had to campaign in Wayne county and never had to go out of that county in order to get on the bench until he drove to Lansing to assume the position than if he had to campaign from Wayne county to the Keweenaw peninsula, and talk to the people, meet their questions and be subjected to their scrutiny. This, it seems to me, is contrary to the popular conception of democracy, that the best way for people to make a decision about a candidate, and the best way for the candidate to serve the people that he is elected to serve, is to be exposed to them and be selected by them. And a judge elected out of Wayne county to the supreme court does not represent the people of Wayne county; he represents the people of the state of Michigan, and he should not, under any circumstances, make his decision based upon the fact that he represents a certain section of the state.

As I said before, if you would like to experiment with this system, I submit you should vote for the minority report amendment and leave the system as it is now with the legislature having the power to institute this system if they want to try it out; but let's don't freeze a system like this, or anything similar to it, into the constitution. We are not asking to freeze the present system into the constitution, to wit, the partisan nomination or the nomination by the party convention. This can be changed at any time. We don't advocate that this should be kept for all time. If somebody has a better system, let's try it, but let's don't try it by taking the flexibility now available to the legislature away from them and freezing a system into the constitution.

We are back around again to this magic word of flexibility. In this particular instance I think the minority finds itself on the side of the angels, because we are not advocating status quo in the sense of saying we have got a system that works, nobody can demonstrate by any example that another system is better, they can suggest by theory that it might be better, and therefore we are holding out against progress. This is not the situation at all. We are holding out for a provision, a constitutional provision, which permits any kind of a change within its framework that the legislature might see fit to institute, and this could be any form of progress in a change. The only condition that is involved here in the present language of the constitution is election, not even statewide election, but just election by the people, and nonpartisan election by the people, and I don't think there is anybody here who is seriously going to urge that the people of Michigan are ready to go to a partisan system of electing judges. I will have to confess and admit that I would have, with greater alacrity, supported a plan for the nomination, the partisan nomination and election that existed prior to 1939, but there just doesn't seem to be very much sympathy for it either here at the convention or amongst the people. The people themselves put this in in 1939, and there are a number of political reasons that have been explained historically for this happening, but it has worked rather well.

There is this, also, to be considered. We gave out the other day photocopies of 2 sections of the recommendations of the state bar that were made before the convention convened. They were made by committees made up of many prominent men. Some of them are here in this convention. Looking at page 47, you have the beginning of the report of the committee on court administration. If you will turn over to page 48, you will see a rather impressive list of prominent members of the bar, I am sure, showing a good cross section of the state by sectional basis, by the judiciary versus the working bar, and by partisan affiliation, if any. The recommendations made, as I stated before, before this convention started, on the basis of a year's work or in some cases on the basis of many years of work, by this committee of the bar were 1, that the present provisions of the state constitution pertaining to the election of judges be retained. Now, did this mean that the members of this committee subscribed wholeheartedly to the exact method that is now used? Not at all. Merely that from the viewpoint of constitutional change, they felt that no change was necessary.

At this juncture it might be well to observe also that although there was a lot of discussion during the campaign for con con about the court system, in watching a lot of candidates in our area it seems to me that the lawyers are the ones who are responsible for talking about it, because this was the safest area for us to talk in with lay candidates against us on the other side, because regardless of our backgrounds, we had a little bit of an edge in that kind of debate. But really, in my section of the state which did vote to call a convention, a crying need for judicial reform was not the compelling motive for voting to call a convention, and I haven't experienced any great ground swell of dissatisfaction amongst the people with the present system, and I don't think anybody else here can honestly say they have, either.

There is always agitation amongst the lawyers, as there should be, for changes in the court system. The lawyers are somewhat similar to the military and anybody else, and I think it might be safe to say when the lawyers quit griping, that is the time to start worrying, and if they ever agree on anything,

then I would certainly be worried, because it is very difficult to get a majority, and certainly never unanimous view, from any group of lawyers as soon as you put 2 or more of them together. Nonpartisan nomination and elections should be retained as to judges who have terms of 6 or more years, except those elected on a statewide basis. The same should apply to the justices of the peace if revision for justice courts were retained in the constitution; the present system of nominating and electing supreme court justices should be retained with the same provisions to apply to judges of the intermediate courts of appeals.

You will notice that they made a distinction on this nonpartisan primary when they got to the justices of the supreme court because, for many of the reasons that Mr. Prettie has indicated, you get into a great deal of difficulty if you try to saddle the system with a nonpartisan statewide primary; that, apparently, in their wisdom, the people who have gone on before us want to avoid. Mr. Prettie has quoted at some length from Mr. Justice Edwards' testimony before the committee, and in conclusion I would like to read a letter that he wrote quite recently to the president of this convention. It is addressed to Mr. Stephen Nisbet, president, constitutional convention, Lansing, Michigan:

Dear Steve,

As one whose testimony pertaining to the judicial article of the forthcoming constitution was sought by the committee on judicial branch, and as a former justice of the Michigan supreme court, and one with continuing interest in the administration of law in this state, I would like respectfully to record my view concerning Committee Proposal 91, submitted by the committee on judicial branch and recorded in Journal 71 of the constitutional convention, dated February 2, 1962.

This proposal contemplates the election of justices of the supreme court by district rather than on a statewide basis. Such sectionalization of the highest court of the state seems to me to be most undesirable. The supreme court of the state should command the talent of the best which is available on the bench and the bar of the state, regardless of where the individual justice resides. Above all, each justice should be dedicated to consideration of problems of law as they affect the whole state of Michigan rather than any geographical or political district thereof.

While I do not, of course, deny that there are many public officials elected by districts who rise above sectional interest in the discharge of their duties to the state or to the country, I see little merit in imposing upon each justice sectional considerations of this nature which would represent a burden to all and a real impediment to some.

I do not comment upon whether or not this plan, by its nature, indicates partisan origin. I have made no detailed analysis of the districts or the electoral picture that might result, and for the moment I assume that it is submitted in utter good faith. There has been, however, much high hope engendered that the constitutional convention might move this state toward modern government and toward good government by the adoption of a modern and sound constitution. In my opinion, sectionalizing or districting the Supreme Court of Michigan is a step in the opposite direction from good government.

I trust the convention will reject this portion of the committee report.

Sincerely yours, George Edwards.

I think that this very clearly and succinctly sums up the position of the minority, and I would like to yield at this time to Mr. Garvin or Mr. Barthwell.

CHAIRMAN VAN DUSEN: To which gentleman do you prefer to yield, Mr. Ford?

MR. FORD: To whichever is ready.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, members of the committee, I walked into this judicial committee, and was really disturbed when I found that I was the only lay member on this 21 man committee. I thought a while, and as I listened to the committee lay their plans out, just how we would proceed to study the article, and listened to them say that we would call the bar association for polls, and the eminent judges to talk to us about this article, I began to feel that I was real happy that I was on this committee, and sorry that some more lay persons were not on the committee, because it immediately appeared to me that this committee considered that the judicial article was made for the service of the lawyers, and they had forgotten the people completely. I want to say, after listening to the very many eminent judges, lawyers and secretaries of bar associations from various states, about the only question that they seemed to have agreed upon was the fact that the court system of Michigan was not bad as compared to court systems of the nation. They all said that we had many things that they would like to have. So, this is about the only point that they agreed upon.

Mr. Prettie mentioned the committee's report. Well, as I live, I learn many things. I even found out how lawyers agree to get a majority report out of a committee. We had a very fine chairman; a very fine committee. We divided very sharply over the different methods of selecting the supreme court justices, so the day before the last day we had our committee chairman say to us, "I have got to report out by the deadline, so I want to get at least 11 votes for some plan. You can sign a minority report or you can get on the floor and oppose it; but just let me bring this plan out." So it was under these conditions that we finally brought out the majority plan.

I figure the division of our deliberations has been over trying to improve the method of selecting judicial officers. It is contended by those who propose the district system that by districting the state this would enable us to encourage a high type of lawyer to present himself for the office of supreme court justice. May I call your attention to the states where this plan has been adopted? They are Oklahoma, Kentucky, Illinois, Louisiana, Maryland and Nebraska. I would like also to call your attention to the fact that of the eminent people we have had to testify before our committee, none of them have pointed out a single one of these states as having a judicial system superior to ours.

Let's look at the committees' supporting reasons which are found in the journal, page 461, and I just want to read the statistics of their reasons to you. The first table is the districts and the population in each district. In district 1: 888,766 people there; in district 2: 690,259; district 3: 817,341; in district 4: 855,308; in district 5: 999,019; in district 6: 904,908; in district 7: 890,062.

This does represent a fairly even division of the people living in the district, but when we get down to the next table, which I really consider the meat of the plan, we find the number of lawyers living in these districts. In district 1 there are 4,215 lawyers; district 2, 566 lawyers; district 3, 544 lawyers; district 4, 520 lawyers; district 5, 767 lawyers; in 6 there are 581; and in 7, 516 lawyers.

Based on the figures contained therein, it shows that where the districts are divided fairly evenly upon a population basis, this does not hold true with reference to the lawyers living in these districts; hence their lack of availability. One third of the justices will always come from over 50 per cent of the lawyers of the state, while 2/3 of the justices must always come from less than ½ of the lawyers of the state. This clearly reveals the mathematical weakness of this contention, because you are going to always have to find the most able people from less than ½ of the lawyers for 2/3 of the justices.

We are not here for the purpose of changing for the sake of change. We want to improve the judicial article. The districting plan does not improve our present system, and I think that the minorities plan to leave it with the legislature is at least giving the lawyers in their political setup as fair a choice as you are giving the people of the state as to home rule. We left it to the legislature for them to decide what home rule would be, and I think we could make a similar compromise,

since this seems to be a compromising deal from start to finish.

Therefore I urge you to please support the minority amendment.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire now to yield to Mr. Garvin?

MR. FORD: I would like to yield to Mr. Everett first.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I am here to support the minority report amendment, not, I feel, for the reasons for which it was offered, but for the principal reason that to me, this is the only method by which we can have a direct vote in this convention, at least in this committee, on the district plan. As Mr. Prettie has very fairly stated, there are a number of alternatives which have been offered. These alternatives will be debated and voted upon in turn, but no other method is given us to express ourselves whether we are for or against the district plan.

If a majority of this committee favors the district plan, we should know this now at the outset. If, on the other hand, a majority oppose it, for whatever reason and with whatever alternative in mind, we ought also to know this so we can then turn to the alternative plan and determine which is best. I think without question, all of us, whatever method we may support, have one common motive. We are seeking the best system of getting the best personnel on the Supreme Court of the state of Michigan. In this case, if, as I say, you are opposed to districting, as I personally am, you will support the minority report amendment so that we can clear the decks and start finding that best method. If, on the other hand, you agree with Mr. Prettie and favor the district plan, you have an opportunity to express yourself by simply voting against the minority proposition.

I would like to second what Mr. Barthwell said. The district plan is only technically a majority plan of the committee. Four of us, myself included, voted to bring it out solely so we could have a matter here to be discussed and to be determined by the committee of the whole, and ultimately by the convention itself. It is for these reasons that I rise to support the minority plan and urge votes for it on behalf of all of those who may object to the districting plan offered.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would like to yield to Mr. Garvin, cosponsor of the minority report.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Garvin.

MR. GARVIN: Mr. Chairman and delegates, I want to emphasize what Mr. Ford said in one respect, just in the event that some of the delegates still believe that the method of the election of the supreme court and the nomination thereof is in the constitution. It is not in the constitution now, and we hope that it will not be, because the legislature is there to rearrange any court structure whenever it is deemed necessary to rearrange it.

You received on your desks the photostat of the Michigan State Bar Journal, page 59, Judicial Selection and Tenure. I am particularly interested in that committee, because I see by the names of that committee about 30 members, people that you know. I want to give you their recommendations to the state bar of Michigan in September, 1961, which is as follows:

> A new state constitution should provide for a court system consisting of a supreme court and intermediate court of appeals, a trial court of general jurisdiction, a separate probate court and a court of limited countywide jurisdiction.

The committee has done that. There are other recommendations:

> No one should be allowed to exercise judicial power unless he is a member of the state bar, with an appropriate exception for present incumbents who are not lawyers.

Your committee has done that. Number 3, "Incumbent judges should carry a designation of office when running for reelection." We have not covered that point. Four, "In elections other persons should be allowed to run against the incumbent." We believe the majority of the committee, believe in that. Five,

> In the multiple court, judges' court, staggered terms should be provided. Precise definition of multiple courts has not yet been determined. Tentatively, however, if a court has fewer than 4 judges staggered terms probably would not be required.

I believe your committee has covered that.

Now, since this recommendation by this august committee of the state bar, which in September of 1961 had such prominent members, I wanted to, if you are not looking at your copies now, give you some of the members. The chairman was one J. Don Lawrence, a very eminent lawyer. One of the members was a person who has been mentioned here, who I believe is justice of the supreme court, Eugene S. Black. Another member whom I believe some of you know, and has made this recommendation, is one Richard C. Van Dusen. Of course we have also Theodore Souris, another august member of the bar of the state of Michigan. I just wanted to bring to your attention that this was in September of 1961, after we knew that there would be a convention to rewrite the Constitution of the state of Michigan.

Now, of these august members of the state bar there is no minority report, but if you look at the names there, you will see people in your own district who supported this —all except the provisions of section g that we are discussing at this time.

So I therefore, through the help and assistance of this august committee, recommend the minority report amendment that section g be deleted.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes you retain the floor. Do you desire to yield further at this time?

MR. FORD: I would like to yield to Mr. Ostrow, who is also a sponsor of this minority report.

CHAIRMAN VAN DUSEN: Mr. Ford yields to Mr. Ostrow.

MR. OSTROW: I support the minority report and oppose the committee report. I want to talk to the nonlawyers. I think I can do some good there. I can't with the others.

Now, we have heard a lot about political influence on the courts and pressures on the courts, all in generalities. At recess time go to the library downstairs and pick up one of these books. Pick up the latest ones. These are the Michigan Reports, and contain all of the opinions of the supreme court on every case they decide. You run through these volumes and see what you can see of a political nature in any of these cases that are reported there. Take a look at the lawyers, take a look at the litigants, take a look at the subject matter. You won't find one in 10 volumes.

Now, the kind of judge who would be influenced by political pressure if he is elected in a convention is the same kind of a judge who would be influenced by political pressure if he was elected from a district, or if there is no district he would be influenced by business pressures or social pressures. Nobody has ever been able to figure out who will become a good judge. You can't tell by what kind of a lawyer he was. Nor can you tell by his clientele before he became a judge what his thinking will be after he becomes a judge.

Your best example is Chief Justice Earl Warren, and I say this not disparagingly. Chief Justice Warren leads the liberal element—to some people the radical element—of the United States supreme court. He was appointed by a president. Nobody could have predicted what his thinking would be when he became a judge. There was nothing in his background as governor to indicate what his thinking was. This thing called judicial temperament, which makes the ideal judge, nobody has been able to figure out how to measure it before the man becomes a judge, whether he is elected or appointed. It is like going around with a girl. You can go with her for 10 years, but you cannot tell what kind of wife she will make until after you marry her. That is the same thing with judges.

So it gets down to the point that it is not a question of influence on judges. There are a lot of people who don't

like the thinking of particular judges. There is no way you can get insurance against that. If you are in the insurance business, you don't like the judgments that have been handed down in automobile accident cases. I submit to you that it is not only Democrats who are run over by automobiles. And I submit further to you that every lawyer who can get into federal court goes into federal court because they get bigger judgments there, and I further submit that it's the jury that determines the amount of the verdict and not the court. In California, where they have a modified form of the Missouri plan, the judgments there are 2 and 3 times as much as they are here.

You look at these books. It won't take you long. Just run through the cases. See the subject matter—automobile accident cases, divorce cases, zoning cases, contract cases—and you see how many of these books you have to go through and how many cases before you run into a single thing that even remotely resembles political consideration. I don't like everything our court has done. Nobody ever likes everything that a court has done. In every lawsuit somebody wins, somebody loses. The losers don't like it. At least I don't. And if you get to losing cases, it gets to be a habit and you can't win. The fault, if we have any fault, is not with the way we pick our judges. Men rise to the occasion. If they don't, it doesn't make any difference how you pick them.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes you still retain the floor. Do you desire to yield further?

MR. FORD: I believe that this takes care of all of the sponsors except Mr. Bledsoe, who wishes to speak.

CHAIRMAN VAN DUSEN: The Chair will recognize Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, fellow delegates, if Mr. Ostrow will permit me, I think I shall address myself to the nonlawyers in this convention.

I want to say to you that, just as Mr. Barthwell said, this was not a majority opinion, in fact, it was not a majority report that came out, because it was tied, and I said to the chairman, "Lock the door." I am sure this will meet with a certain expression that was given here the other day about locking the lawyers in, because I wasn't prepared to come out of there. And it was after I said lock the door, I think it was one of our gentler sex, or the only gentle sex of our committee, who said, "Well, I'll put my 1 vote in just for the purpose of getting out of here." That is how you got this. Now don't feel that this is a sacred cow. This is your supreme court, and it belongs to everybody, and we thought it was so important we had better bring it out to you and let you help us thrash it out.

The only thing that disturbs me, and it has disturbed me all along about the possible changes that may take place with reference to our supreme court: I came, and I am certain most of us did, with the idea that we would try to make things, where we could, make a better article or make a better constitution, and I listened with great interest to find out just where these improvements could be made, and we don't have any. The only criticism that we have heard, and it came both from very eminent men, the judge, and my good friend, brother Prettie, over there, but it seems to me, after listening to them, the only thing that disturbs them is the fact that after the candidates are nominated by the respective parties, they have to take a bath before they can run on a nonpartisan ticket. That is what they said, both of them. Not a single word, just as Sam has said—and you read those opinions of those judges, I am certain you won't get any idea that they hadn't taken a bath when they wrote those opinions.

Now, that's procedure. That's procedure. If we don't like the way that our conventions are subject to vote, they are partisan, and if we don't like the way that they nominate our judges and get them on the ticket to run, that is a change that can be done by the legislature, and if we haven't arrived at the place in our social thinking that we can achieve that, let's not bind the infirmity of our inability to accomplish this on the next generation for 50 years. Maybe 10 or 15 years later there will be a smarter generation that can come through with this. It has given us a lot of trouble, and that is why this article is here. That is exactly why it is here. We believe in nonpartisan election of judges. We believe that it should be done by the great political parties. Maybe we don't like the party system, but what can we do better? Just like the jury system, let's change it. I don't know anything that is better than having the selection of our judges by our political parties. They come from the people. The delegates who come to those conventions nominate the candidates for the rest of the members of our governmental structures without them having to take a bath to run. We nominate the attorney general, and we nominate, up to now, unless there have been some changes hereabout—proposed changes, I think, in the department of education, but the same conventions that nominate the other members of your parties are nominating these.

Now, if we're going to start changing, you are going to have to make basic changes, and until we do that, until we can come up with that, I see no reason to change just for the sake of change. I asked Justice Black, when he came before our committee, I said, "Well, Judge, do you think that —" and it is in the record—"any of the men who are presently sitting on our supreme court are men of ill repute?" or that "anything that has happened to them in the process by which they got the office that has made them unfit to sit there?" I challenge the record, brother Prettie. You were sitting there. And his answer was no. That was the answer. I asked that question more than once. There isn't a single person who came before that committee who was able to pinpoint any scandal or anything that would tend to degrade our court by virtue of the process by which they are presently elected, and the record is entirely barren of that. So here this morning for the first time I hear they need to take a bath after they got nominated by the party. That is the only thing. The presumption is when a person needs a bath, he needs one. But that wasn't even mentioned before the committee. It might have had some influence if it had. It was mentioned here on the floor for the first time.

Now, if either of these gentlemen can get up here now and break this bath situation down where we can get hold of it, and tell us just what it is that happens to a man who is nominated by his party, selected by honorable people from the community as an able, honest, fearless, upright man to sit on that court, and then he is nominated by the party, the same party that nominates the rest of the ticket—and that's done by both parties—and after we carry him through there, and he is elected by the people on a nonpartisan ticket, I want to know where this metamorphosis takes place that degrades this man after going through this process. Just pinpoint the apex of this change where he—between cleanliness and uncleanliness, after all this has happened to him, so we can take that out right here on the floor. And until that is done, I see no reason at all for disturbing this, and certainly fastening this procedure on our generation for another 50 years—because I do hope they will be a little smarter than we are. For that reason, I think we ought to ponder this a great deal. It is your ox and it is my ox. Let's tie it up in this matter, and forget the fact that this was a majority consensus that came out of that committee, because it wasn't. We are going to have to depend upon you, my good laymen, to help us get out of this. The lawyers are stuck.

CHAIRMAN VAN DUSEN: Mr. Danhof—excuse me, Mr. Ford, the Chair believes you still retained the floor.

MR. FORD: Mr. Chairman, I believe this concludes the presentation of the minority, and at this time I would like to yield to the chairman of the committee, Mr. Danhof.

CHAIRMAN VAN DUSEN: Mr. Ford yields the floor, the Chair takes it, and yields to Mr. Danhof.

MR. DANHOF: Mr. Chairman, as we anticipated this has engendered much debate, and will undoubtedly do so later. Looking at the hour, I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the

committee do now rise. Those in favor of the motion will say aye. Opposed, no.

The motion prevails.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one section of one proposal on which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91** and has come to no final resolution thereon.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Will the delegates please note that the picture proof interviews will be in committee room G for the remainder of the appointments beginning at 1:00 o'clock this afternoon.

Mr. Kelsey asks leave to be excused from the afternoon session.

PRESIDENT NISBET: Without objection, he will be excused.

Without objection, we will return to the order of **motions and resolutions.**

SECRETARY CHASE: Messrs. Bentley, Hutchinson, Downs and Romney offer

Resolution 80, A resolution requesting that religious bodies of this state offer prayers for the success of the convention.

Following is Resolution 80 as offered:

Whereas, The people of the state of Michigan are greatly desirous of the success of this constitutional convention; and

Whereas, The people of our state and our nation are a deeply religiously people, being accustomed to seeking divine assistance in times of trial and trouble; and

Whereas, It seems appropriate to seek such assistance and intercession from Almighty God through the medium of prayer on behalf of the work of the constitutional convention; now therefore be it

Resolved, That the delegates of the constitutional convention respectfully request and urge all members of organized religious bodies within the state of Michigan to offer prayers for divine help and guidance in their work and looking toward the ultimate success of the convention; and be it further

Resolved, That the delegates of the constitutional convention further respectfully suggest that a day or days be set aside by such religious bodies for the purpose of offering prayer with the aforesaid motives thereto.

PRESIDENT NISBET: Referred to the committee on rules and resolutions.

The Chair recognizes Mr. Liberato.

MR. LIBERATO: Mr. President, I move the convention recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion to recess. Those in favor will say aye; opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present. Prior to the lunch hour, Messrs. Liberato and Youngblood filed with the secretary a request to be excused from the session of this afternoon.

PRESIDENT NISBET: Without objection, they will be excused.

The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the **general orders** calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All those in favor will say aye; opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When last the committee sat we were considering an amendment to section g of **Committee Proposal 91,** offered by Delegate Ford. The Chair had 3 delegates seeking recognition on the amendment. The first of those was Delegate Lawrence, the gentleman from Ypsilanti. Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, I rise to speak in favor of the amendment and against the committee proposal, the so called majority proposal, which really isn't a majority at all, and wasn't a majority except for the purpose of getting the proposal out of the committee.

I concur in what Mr. Everett stated this morning, and I feel that this convention and the people of the state will be much better served if the minority proposal is adopted. After all, our purpose should be to get the best candidates possible, and, as I see it, it will least be served by the elective position taken by the so called majority report.

I would like to ask a question—I would like to have somebody at some time explain it—and that is, if the elective system is best, if this elective system as that part of the proposal contemplates is the best method of getting the best judicial candidates possible, why is it necessary to break it down into districts? What is there that this perfect system, so called, has that it cannot be conducted on a statewide basis for a state office? Why is it necessary, if the system is so good, to gerrymander the state, allocate to Wayne county a total of 3 seats and leave outstate either 4 or 5 or 6 seats, depending on the number of judges we end up with in the supreme court? I would like to have someone tell me what makes this system, this elective system, better if it is on a district basis than if it is on a statewide basis.

Surely there is nobody here who would claim that a voter in Wayne county, of that large population, would know the qualifications of the 3 candidates in Wayne county unless he happened to be an attorney who knew them or made some special study. He could just as well find out about a candidate from Grand Rapids or Flint or Saginaw, or any other place in the state, because he is going to have to make an investigation, and an investigation probably is not necessary as much outstate, whether it is a statewide candidacy or not.

Certainly if the system, which is the system we have used in the past for all these years on a statewide basis, of electing our judges, if that is what is claimed we have been doing—at least we have been going through competitive elections eventually—if that has been good all these years, why has it suddenly become necessary to divide the state up?

Of course, it is my contention that the elective system as proposed in the majority report does not weed out and make available the best talent obtainable, and, of course, that is the real difficulty with this elective system where anybody who can get the necessary petitions, or can get nominated at a party convention, immediately injecting politics into the judiciary, or whatever other method is used which is eventually decided on by the legislature, can become a candidate. It doesn't make any difference whether it is in the supreme court or in the circuit court, when it comes right down to it there must be some means of selecting the candidates in the first instance; some competent way of doing it, and not by political parties, if we are to have a truly independent judiciary.

So, for those reasons, that there must be a fatal defect in the system or it would not be necessary to break it down as they are trying to do, I urge you to support the minority report amendment and vote against the committee proposal.

CHAIRMAN VAN DUSEN: The lady from Grand Rapids, Delegate Judd.

MRS. JUDD: Mr. Chairman and members of the committee, I should like to make a few comments on the arguments that have been presented to us this morning, the argument being in favor of the district plan.

I couldn't tell for sure this morning which side Delegate Prettie was arguing on because he called to witness 4 Democratic justices, and we know that the Democrats are opposed to a district plan, and then he called to witness 1 Republican justice, whom we know is in favor of an appointive plan. However, we can find out a little more clearly the reasons why the majority or so called majority of the committee want the district plan, and I would like to take up point by point the rationale given in the journal.

MR. LEIBRAND: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Leibrand.

MR. LEIBRAND: It is my understanding we are discussing the minority report, and Delegate Judd is discussing the majority report.

MRS. JUDD: I am discussing, Mr. Chairman, the reasons why we should delete the majority report. Is that in order?

CHAIRMAN VAN DUSEN: The Chair thinks the lady was proceeding in order, Judge Leibrand.

MRS. JUDD: The general reason is that the reasons given in support of the majority report are not, in my opinion, valid reasons. We have not been given a good reason for voting for the district plan, and therefore we should vote against it.

If you would turn in your journal to page 468, let's discuss some of these reasons. Reasons 1 and 2 say that the candidates and the voters may meet and know each other. In the twentieth century this is a nostalgic viewpoint. Obviously the writer does not live in a metropolitan area where people don't know their neighbors and seldom even see the family that lives across the hall. If, indeed, the need to be personally acquainted with a candidate for statewide office were possible and valid in our day, wouldn't it be equally reasonable to divide up the office of the chief executive into 7 parts and elect 1 member of it in each of 7 districts, and then some of us would know 1/7 of the executives.

Drop down to reason number 4. A "balance", it says, "will be maintained in the type of men sitting on the court . . . thus assuring a statewide approach to cases. . . ." Balance in the type of men. I think this is a valid term. What type of men do we want on the court? I would presume we want men of integrity, knowledge of the law, objectivity. Do these qualifications relate to area? Do we want merely a balance in these justices of integrity and objectivity? How does dividing the court in areas assure statewide approach? Doesn't it rather tend to show a provincial point of view?

Reasons 5 and 6. It is consistent with a nonpartisan judiciary, the journal says. Let's skip this one for the moment. It strikes at the heart of the issue and should be our final consideration.

Reason 7. It would remove the inordinate expense of a statewide campaign to the candidate. Any election which is nonpartisan, and hence without party backing, is an inordinate expense even in a district, as all of us know who survived the primary for election to this convention, and to just that degree it limits the independence of the judge unless he is wealthy in his own right.

Reason 8. It would attract the candidates of the highest quality. This presents a puzzling contradiction. No doubt it will attract some able men. Any system of the selection of judges will secure some men of high quality. But, on the other hand, I hear the argument that you can't require probate judges to be lawyers, because in some areas there are too few lawyers. Yet from the same area we are asked to elect justices of the supreme court who, we are told, will assuredly be candidates of the highest quality.

Point 9. Would inspire every lawyer to strive for excellence so that his fellow lawyers might think him worthy to serve on the court. Here I believe the rationale falls to a lower and lower level. The system will inspire lawyers to be on their good behavior. Is this why we have courts? The argument, in my opinion, is a brazen appeal for lawyers' support of the district plan. No wonder so many lawyers like the plan, and, parenthetically, I don't dislike lawyers. I love one very much. The writer has evidently at this point forgotten that there are laymen in the convention.

Point 14, the third paragraph down. Justices in the past coming from many different parts of the state, once elected, take a statewide view. The implication is that under the district plan they will also, once elected, take a statewide view. This is a logic hardly worthy of the legal profession, for the key to the viewpoint of a justice is not where he came from but to whom he owes his election.

Another view of the rationale brings its Achilles' heel to light. The whole argument falls when we look at district 7 on the map. Forty-eight counties stretching from the Bay City line to the tip of the Keweenaw peninsula. Will the voters of this vast area be acquainted with the candidates? Can a candidate make the rounds of every city and village? Is the area so uniform in its characteristics that its judge can add to the "balance of the court?" Will a campaign in the area be inexpensive? And why is it so big? The answer is the lack of lawyers in the area. If all the advantages of the system claimed in the rationale failed to hold in this district, what value the system?

Let's go back to points 5 and 6. It would eliminate partisanship. Yes, it would, perhaps, within the district, but as to the court as a whole it would assure partisanship. Indeed, at this point, we must face the reality of the plan. It is designed to assure partisanship.

In this convention the delegates are faced with 2 alternatives coming out of the judiciary committee, the majority report for election by district, designed to assure Republican dominance of the court, and the minority report for statewide election, designed to assure Democratic dominance of the court. Is this the way to secure objectivity in our judges?

I say a plague on both your houses. Let us defeat both these plans and search for one more likely to assure political independence and objectivity, and fair to both parties.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Norris. Mr. Norris passes. The gentleman from Detroit, Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to ask Mr. Ford a question.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. IVERSON: I believe Mr. Ford, in his presentation of the minority report, made the statement that we do not advocate that the present system be kept. As I read the rationale of the minority report on page 580, "The legislature has provided a system of nomination and election under the 1908 constitution which has worked very well in the state of Michigan," and then, in the closing paragraph,

> In conclusion, the proponents of this minority report believe, after listening to testimony by representatives of the bench and bar throughout the state and at all levels, as well as representatives from the bar associations of other states, that our present system for selection of supreme court jutices is far superior to any alternative plan presented before our committee.

I would like to ask Mr. Ford if his statement in presenting the minority report is the correct one or is the rationale included at page 580 the correct interpretation?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer? Mr. Ford.

MR. FORD: They are both correct. They don't differ. Art is using one of these things that Mr. King characterized as a lawyer's device on this floor yesterday, or the day before, trying to create the impression we are being inconsistent. I think I said earlier today that we are on the side of the angels on this one because we are not holding out for status quo in a rigid fashion. In this case status quo is flexibility and not rigidity. What I said was that in the opinion of the people supporting the minority report the present system was superior to anything that had been offered as an alternative, and this I will stand by. What I said this morning was that in addition to this, even if you believe that the district plan is a good plan

you should still support our position because our position is that no matter what plan you select at this point, unless you are convinced that it will work for all time in the future you shouldn't freeze it into the constitution. And all we are asking to do is leave the flexibility that now exists in the language that is now in the constitution so that if you want to try a district plan and it doesn't work, you can take it back out.

So I will stand by the statement I made this morning, and also the statement made by the minority. As far as we are concerned with what we have before us now, we urge that you vote for the minority amendment even if you believe in the district plan, because the right way to do it, if you want to do it, is not by freezing it in the constitution, and if you believe in the Missouri plan or the modified federal plan, or whatever plan you have in mind, you should still vote for the minority amendment to strike section g from the so called majority committee proposal.

Now, when we speak in the minority report, in the written report here at 580, we are simply saying that 7 members of the committee not only prefer that you don't put the district plan in, but prefer that we retain the present system.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, I would like to make one further comment, and I dislike to suggest that Delegate Judd did this intentionally, but apparently she is so wrapped up in her opposition to the district plan, and so wrapped up in a plan which is not the present plan of the supreme court, that she decided that under section 9 of the rationale this was for every lawyer in the state to strive for such excellence that his fellow lawyers might think him worthy to serve on this high court.

I am sorry to say that Mrs. Judd failed to quote all of the language, because the language reads, ". . . every lawyer in the state to strive for such excellence that his fellow lawyers and the public might think him worthy to serve on this high court."

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Detroit, Dr. Nord.

MR. NORD: Mr. Chairman, I come before you not to praise the district plan but to bury it. I don't know that I have the power to bury it, but if it is possible I will add my little bit to it.

It is very, very difficult to speak calmly about this plan. I have been advised to speak calmly about it, and I doubt whether I can do it. It is not a calm type plan. I have been reported in the newspapers as saying I believe that it's something like a disgraceful plan. I believe that it is. In fact, I reported that this is one of the most disgraceful plans that I have ever seen before me at this convention.

The fact that The Detroit News' editorial supports my position does not make me think I am wrong. They are usually on the opposite side, but it happens this time they are on the same side. I did not distribute this thing, and I don't believe in publicizing it in the newspaper. But I notice from the remarks of Mrs. Judd, and from the editorial of The Detroit News, and some other sources of information, that this issue is a very, very tricky proposition, and partisanship or nonpartisanship is at the root of it. It is not sufficient to say that nonpartisanship is at the root of it. Both nonpartisanship and partisanship are involved.

Before we decide this issue it seems to me it is very important to understand how basic the whole problem is. This is the most basic problem we can ever face in the constitution. I will explain why I take that view. We write in a constitution protection for people from the majority, and we put that in the constitution in the form of the declaration of rights. It prevents the majority from doing wrong in certain cases to the minority or to an individual. Then we select supreme court judges to make sure that that constitution remains in effect. If we ever have judges who do not obey the constitution, particularly with respect to those basic rights, civil rights, civil liberties, then we have no constitution, and that means we have no protection for minorities, and that means we don't have the rule of law.

As I say, there is no such thing as a legal system or constitutional system unless the judges are selected according to some system which will guarantee that they do live up to the constitution and the laws. Nobody has ever figured out a system that will guarantee positively they will do that, but there have been other systems which certainly don't do that.

And I will call to your attention — maybe some of you have seen that new movie, Judgment at Nuremberg, and if not, you are aware of the fact that there were judges, supreme court judges, in Germany, and they did not uphold the constitution nor the laws, and a horrible result eventuated.

It is crucial that judges obey the constitution, and that they obey the laws, and that they be independent of day to day pressure. I have no doubt about that. At the same time there is also the problem of what do you do with judges who go wild; how do you get rid of them? You really have 2 inconsistent problems, and that is why nobody has a neat solution. One of them, how could they be independent of the public, because if they are not independent of the public that means they follow the majority rule, and if they follow the majority rule, what happens to the rights of the minority under the constitution. Therefore they cannot always follow the majority rule. On the other hand, suppose they never follow the majority rule; suppose they abuse their power. You must be able to get rid of them. And because of these 2 things, that they must be independent, and, at the same time, be in contact with the public somehow or other, no one has ever figured out a really good system, to say nothing of a perfect system. It is a difficult problem and it's a crucial problem.

There are 2 halves of this problem about how you select a judge. One is how you select him in the first place, and the second one, what you do with him after he is a judge. How does he stay in or how does he repeat his term of office? The way he is selected the first time is not particularly important. For example, we have an election system now, and yet, in effect, it is an appointive system. I believe that it's perfectly all right. I don't really worry too much of how we appoint them. But what does bother me is how we get rid of them. If we can't get rid of them we can be in for a lot of trouble.

In this connection I would like to say that the plan that is proposed now is the one plan that makes it certain that you can't get rid of them. Just think about what this plan does. Suppose there is a judge who is abusing his prerogative, he is behaving in a monstrous manner, he cares nothing for the constitution. Nowadays he has to return to the people and if the people of the state judge him he goes, he is booted out. But under the plan that is proposed he will not by judged by the people of the state. Eight-ninths of the people of the state will be disenfranchised from rendering an opinion on that judge. Eight-ninths of the people are excluded from making such a determination. All that is left is 1/9 of the people. He cannot be booted out anymore by the people. He can only be booted out if it so happens that that 1/9 of the people wish to do so. All he needs to stay in power, no matter how he abuses his office, is a majority of that 1/9 or 1/18 — in other words, a little over 5 per cent of the people. If he has them behind him he can do anything he pleases, and he can never be removed from the office unless he behaved in a crooked manner. He might be impeached.

The point is, the people cannot boot him out. This is one of the most pernicious features of this plan. Let's not get mixed up about the details, that this is just a technical difference. It is not. It is the heart of the matter. Either the people can kick him out of the court or they cannot. Under the present plan, and, in fact, under every other plan I have ever heard of, the people can kick out a judge. Under the plan proposed here they absolutely cannot.

Now, what is the reason that some effort is being made to change the system? I think there will always be some effort made at all times to change the judicial system, because there is an absolute conflict among 2 ideas: to make the judge independent, at the same time to be able to kick him out. So it is in this case, and no doubt in every convention there is a desire to improve the system. In this particular case the problem has to do with nonpartisanship. I have been hearing here that the argument is that the judge is now selected by a

partisan convention and then he takes a bath and runs on a nonpartisan ticket. There is no doubt that that seems very odd. Whether you say take a bath or not, it doesn't seem very sensible. In fact, it seems hypocritical, and many people have objected to it because it is hypocritical. So let's examine that situation and see whether it is hypocritical or whether it is something else.

What is a nonpartisan election? That is the root of the problem at this stage of the problem. What is a nonpartisan election? A nonpartisan election is an election in which somebody runs for office and nobody supports them except when they go to vote. Nobody comes around and says, "Here is some money for your campaign." Nobody says, "We will help you in your campaign." They just leave him alone. No 2 people get together to support that candidate during the campaign. I ask you whether anybody has ever run for office under those conditions? The answer to that, as far as I know, is no. There is no such thing as a campaign which is nonpartisan in the sense that the man runs entirely by himself; that nobody assists him, and if you adopted a law that says that the campaign shall be nonpartisan, what is it that you say? You say that nobody shall assist him. You say that nobody shall help him financially, nobody can help him in any other way.

In my opinion, first of all, that is impossible to accomplish. In the second place, it would be extremely unwise to do it if you could accomplish it. We do want people to be able to get assistance from others in order to be able to run, otherwise nobody could ever run except the most wealthy man.

In addition, it seems to me that there is a basic civil right involved, and that right is the right to assist in a campaign and not just the right to vote. I therefore conclude on the point that the idea of a nonpartisan campaign is a fiction. In addition, it would be an unwise thing even if it could be done.

A nonpartisan ballot is an entirely different story. A nonpartisan ballot is the easiest thing in the world to do. You simply do not allow anybody to state who it is that supports him on the ballot. Now, there is certainly some merit to that in some cases. I have no objection to that system. In fact, I believe it is the best system for judges. I also believe it is perfectly all right to put the word "incumbent" underneath the name of a judge. There isn't anything wrong or difficult or complicated about having a nonpartisan ballot. But when it comes to having a nonpartisan campaign, as I say, it seems to me that is impossible and also undesirable. Now, if you face up to that, what do you conclude? You conclude that it seems to be desirable to have a nonpartisan ballot, and it seems to me desirable to have a partisan campaign.

That is the actual situation in Michigan at the present time, and I say that didn't happen by accident. It happened by trial and error. We have not been able to come up with a better solution. Here is not a great solution, but there doesn't seem to be a greater one in the offing.

Turning to the merits of the specific plan that we have before us, which has to do with population districts, I would like to say a number of things about population districts in view of the fact that we have been studying them at this convention for 5 months with great detail.

First of all, I would like to put this out: a number of Republicans, and, as a matter of fact, people not at the convention have a mistaken notion about the nature of population districts; districts which are equal in population. They have a notion that such population districts in this state under the present voting system would tend to be Democratic on the overall results. That is not so. The actual statistics based on past voting records show a different thing entirely. They show, as a matter of fact, for example in the legislature, where you have districts, that on a population basis the Democrats normally lose—in fact, they always have lost in the recent past—by a small margin, and the reason is that even though they may get 52 per cent of the vote ½ of the time, a big part of that vote is, so to speak, wasted votes. It is in Detroit where we have excess votes for Democrats, and they don't make any difference. And, as a result—and there is more of that in the Detroit and Wayne county area than there is outstate to counterbalance it—as a natural result of that, the actual facts show the population districts slightly favor Republicans. I am not against population districts because they favor Republicans. I am in favor of population districts in the legislature, or wherever we need to have districts. But I wouldn't want anyone to make a mistake and think that when you support population districts, that you are bending over backward to be nonpartisan or to be in favor of the Democrats. It is not so. To the contrary, it favors Republicans.

In this particular case, for example, where you have 6 districts, the various different estimates I have seen based on present voting strength would indicate you could expect to have 3 Democrats and 6 Republicans, or some people say 4 Democrats and 5 Republicans. I know that The Detroit News agrees with me on that point, that they feel that the result of this plan would be a majority of Republicans. I really doubt if anyone thinks the reverse. It is a Republican plan to that extent and the reason I mention that is because this plan has been put forward as a nonpartisan plan. A nonpartisan plan which switches the court from a majority of Democrats to a majority of Republicans is really not a nonpartisan plan.

But again considering it on the merits of a population district, we have had a lot of experience with population districts in the legislative organization committee. We know it isn't as simple as you may think. The first thing we learned is that in any kind of district, whether on population or something else, we run into the problem of gerrymandering; that is, where do you draw the line? No matter where you draw the line it has some political consequences, and if you draw lines for supreme court judges it will have political consequences, and if it has political consequences it will not be nonpartisan, it will be political. I don't see why we should wish to introduce the problem of gerrymandering in another part of the constitution. It is bad enough when we are forced to have it in one place, but we certainly shouldn't welcome it and bring it in in another place.

Similarly, the problems that we have had with apportioning of the legislature would be introduced in the judiciary. You know that in this plan as it is proposed, at the end of a certain period of time, January 4, 1973, and 10 years thereafter, every 10 years thereafter, the legislature would be expected to draw new lines, new districts, roughly based on population or as one of the proponents said, on population as nearly equal as may be. That is not the exact language of the proposal, but that is the language mentioned by the proponent. The legislature has not had a good record in drawing such lines in the past; not just in Michigan, but in all states they have had the most complicated trouble there can be. In the legislative apportionment committee we decided to give up on the legislature and turn it over to somebody else. It was just not possible to do it. I recognize the problem here is not identical with the one there, but the point still is that there are political consequences to those lines, and if there are, the legislature is going to have trouble drawing them.

What happens if the legislature does not draw them, as they were not able to do before? Suppose they fail to follow the language you have here? Suppose they never reapportion? You will have the same problem as you have with the legislative apportioning. You are just asking for new problems which never existed before. Suppose the legislature should adopt a plan, a reapportioning plan, but it isn't within the terms of the constitution. Who will adjudge that? The Supreme Court of Michigan will adjudge it. Now you will be asking the supreme court to determine whether the district plan for it is constitutional or not. It seems to me that you are simply inviting trouble there, too. You are injecting political boundary lines into the court.

I might say as well, possibly, that the legislature, having this power, has very considerable power over the supreme court. I recognize they can't actually get rid of a specific judge, but still they could affect the courts of judicial opinion by the power to redistrict, and they might use it as a club on the supreme court. This problem about population as nearly equal as may be also has caused trouble in the legislative or-

ganization committee. When some of us introduced a proposal just like that for the house of representatives, it was argued by others that it was impossible to do; that there was no way to make certain that something really is as nearly equal as may be because it is too vague. The language we have before us, of course, is more specific than as nearly equal as may be—it says within ¼ and ½, but anyway, if they attempt to come as nearly equal as may be, as is the objective stated by the proponents, we have that problem that we don't know exactly what that means. In the house proposal that the minority put out for the legislative organization we did attempt to grapple with that. We set up a statistical test so you could tell whether one proposal was closest to the norm or another was closest. We don't have anything like that in the present proposal for the judiciary. Again we will be running into problems about which plan is more constitutional than the other.

The main thing that you are doing by drawing these districts, I think we should recognize is that you are not just drawing lines on a map. What you are doing is drawing lines around people, people who live in various places of the state. And it seems to me there is never any reason to draw a line around a group of people and say from now on you will be treated differently from another group of people in the state, unless you have no other choice. In the legislature we have no choice. We elect them by dictation from those districts. In the supreme court that is not the situation. There is no need to draw lines around people.

Now, when we elect officials, supreme court judges, from these districts, what is supposed to be the objective of these districts? If it is anything like a legislative district, it means that the official is responsible to and therefore is responsive to the people of that district. If that is what we mean in this case, we are certainly making a terrible error. We don't want supreme court judges to be responsive only to 1/9 of the people of the state. We want them to be responsive to all of the people within a limited extent.

Also what you do when you draw lines about people is, you set up a quota system. I might say that the quota system is one of the things that causes me most to shudder. The quota system is something we must always try to avoid. Why must we have a quota system that says that we must have 3 judges, not less and not more, from Wayne county, and 1 judge from the upper part of the state, not more, not less? A quota system is a system that I have been familiar with in a very unhappy way. Quota systems are always used to discriminate against one group of people or another. In this case, when you enter into a quota system, you are letting loose that kind of objective. It seems to me that that might be the real objective behind this, to say that under no circumstances—and that has been mentioned here by someone that that is part of the desire—shall there ever be more than a certain number from one part of the state. That quota system I object to very strongly, and I might say, too, it doesn't make me feel better that under this proposed quota system you would increase the number of judges from Wayne county. I haven't got the slightest reason to believe at the present time we ought to have 3 judges from Wayne county. I don't know who the third one would be. We are better off not to have one from Wayne county unless we know who he is. Nobody should think that just because a number of us Democrats are from Wayne county, therefore we would enthusiastically endorse another judge from Wayne county. As far as I am concerned, nothing could be further from the truth. We don't want something for ourselves, for the district that we come from. This is not a district or local problem.

Now, what have we actually done when we adopt or attempt to adopt this particular plan? It seems to me that we take a very peculiar view of a constitution when we do this. First of all, I think we have to recognize that this is a radical change from the past in Michigan. It is a radical change. It is true that some states have taken this radical step. It nevertheless is a radical change. We can't predict exactly what will come out of it. I am not against every radical change. I believe every time there is a need for a radical change, then it should be taken. But for any change, whether it is a slight one or a big one, in a constitution, I am always cautious about making that change, including a legislature apportionment. My position has always been the same. In a constitution you must be conservative. You must not make changes, because what you have is a document that protects the rights of minorities against the majority and you mustn't tinker with it. You must leave it alone as much as possible. You only make a change when you feel there is a necessity, when you feel you have an answer to that need. In other words, there is a big burden of proof in making any change in the constitution.

In this case, with respect to the judiciary, I don't see that the committee has carried the burden of proof. They have failed to show, first, that there is a need for change, and second, if there is a need for change this is the solution to the problem. A conservative view of this problem would say that it looks like there is a need for change, and when we can find one that we know is good we will make it, and before we know that it is good we will leave it alone.

Mr. Prettie has inferred that he reached this particular proposal on the basis of the process of elimination. He eliminated all the other proposals, and there was nothing left over except this one. It seems to me that that is a rather backwards way to come up with a new constitution. When you do it that way, you are not sure you really have eliminated everything there is, and you are not sure, even, you shouldn't eliminate this one. You have a sort of elimination type plan. I suggest that if we continue to examine this proposal we will eliminate it, too, and when we do we will be in a position of going through all the other plans that have been thought about, considering every one of them separately, and then if we find one of them is good we will adopt it, and if we find another one that is good, it seems to me the logical thing is to leave it alone.

Mr. Chairman, that is my basic position. We have not seen anyone carry the burden of proof on this plan, and if there is a need for a plan we haven't seen that this is the right one and, that being the case, it should be rejected.

CHAIRMAN VAN DUSEN: Judge Leibrand, some time ago you rose. Did you seek recognition independently of your point of order?

MR. LEIBRAND: Yes, I did, Mr. Chairman.

CHAIRMAN VAN DUSEN: The Chair will recognize you.

MR. LEIBRAND: Might I inquire before I start, of the Chair, what we are discussing?

CHAIRMAN VAN DUSEN: The question before the committee is the minority report amendment offered by Mr. Ford and others to strike out section g of Committee Proposal 91. Section g is the section of the proposal which provides for the method of election of justices for the supreme court.

MR. LEIBRAND: That is what I thought, but I was somewhat misled by the other speakers.

CHAIRMAN VAN DUSEN: The Chair would state, Judge Leibrand, that he was reluctant to interrupt any of the speakers in midstream. The Chair would certainly agree with your point that it would be wise for all the speakers to attempt to confine themselves, as near as possible, to the question before the committee.

MR. LEIBRAND: May I recall to the Chair that I tried it once and it didn't work?

CHAIRMAN VAN DUSEN: The Chair ruled at that time, and he thinks properly, Judge Leibrand, that Mrs. Judd was addressing herself to the point. The Chair will try to keep everybody on it as much as possible.

MR. LEIBRAND: Well, I will keep on it, and I will start, that is, on the minority report amendment, and I will start by pointing out to the delegates that what we are considering here is an amendment that would, in effect, keep the present system of partisan nomination of supreme court judges and appellate court judges, if we have them; nomination in party conventions and elections as nonpartisan at large. I am opposed to the minority report, or amendment, whatever it is called.

Now a number of lawyers and some laymen have taken the floor and theorized and speculated on what effect this

party nomination and nonpartisan election has upon a judge. I don't know, and I don't think they know, but I am going to call a witness who does know, the Honorable Eugene Black, who in 1955 or '56 received a nomination for the supreme court from the Democratic convention, and who 8 years from then, 1963 or '64, is going to have to be going back to that convention, hat in hand, for a second nomination. My good friend, Harold Bledsoe, recalls that when Judge Black was before the committee he, Delegate Bledsoe, asked Justice Black, in effect, whether or not Justice Black felt that the system corrupted or made corrupt the justices of the supreme court, and Justice Black, naturally enough, answered no, that he din't think that, and neither does Delegate Bledsoe, and neither do I. But I have in my hand a transcript of a statement that Justice Black gave before the committee on judicial branch, which tells in plain, unvarnished terms what he does think of this monstrosity of a system that would be reinstated by the adoption of the minority report amendment. Mr. Justice Black said — I don't have the date, but the committee records will have that—

> No one believes under this impossible system of open partisan nomination followed by the pretentious fakery of a nonpartisan election that the pressure of party politics has ever or could be fully eliminated from our minds and consciences. When men look forward to continued nomination and election, and actually owe the very perpetuation of their tenure to the pleasure of a partisan group, we ask too much of them to expect total judicial independence.

And get this. Says Mr. Justice Black,

> The people have a right to expect of a supreme court justice no less than that kind of independence Marshall called for 130 years ago, limited solely by God and his conscience.
>
> I know that 1 or 2 members of our court protest vehemently that party politics are eliminated from supreme court souls and deliberations, as thoroughly as if each of us had been cleansed in the Jordan 2,000 years ago. You may take your pick of these conflicting viewpoints, but you will have no doubt about this: whoever is right, the political appearance or partisan posture of the court before the public is as damaging as the fact thereof. There is no use trying to deodorize by talk or double talk the impression the public is beginning to inexorably have of our partisan nominated courts. That can only be done by constitutional action, because, as we know from 20 years of experience, the legislature will not act.
>
> You may gather from all this that I don't want supreme court justices picked either in the Detroit athletic club or solidarity house. I suggest that they should be picked in the open, by open personal primaries and open personal elections, just as it worked so well for 2 decades with the circuit and probate benches in all outstate Michigan.

Now, I have a thesis, Mr. Chairman and delegates, that I intend to carry all through this convention, and that is: the best government is the government that is closest to the people. The district system will produce that. The minority report amendment will bring us back to the hodgepodge of political confusion so aptly and well described by Mr. Justice Black. Thank you.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Ann Arbor, Dr. Pollock.

MR. POLLOCK: Mr. Chairman, fellow delegates, I presume it is still in order for a nonlawyer to make a few observations.

CHAIRMAN VAN DUSEN: You are quite in order, Dr. Pollock.

MR. POLLOCK: And also that the purpose of the committee of the whole is to promote brief and informal discussion.

CHAIRMAN VAN DUSEN: That had been the Chair's thought.

MR. POLLOCK: Thank you. I merely want to discuss the present parliamentary situation, in the course of which I will very briefly state my own opinion. I favor the adoption, for the moment, of the minority report amendment, because I think that the arguments—and I wish to associate myself with the able arguments made, among others, by Delegate Everett, Delegate Ostrow, Delegate Judd, Delegate Nord. Those arguments, it seems to me, have demolished the proposal of the so called majority of the committee. I think the proposal, the majority proposal of the committee, is an utterly defective plan for the reasons which have been so adequately presented to this committee. I also, however, wish to say that I am not at all satisfied with the present plan provided in the present constitution. But since this committee of all lawyers, with one very long suffering pharmacist, was unable to come up with an agreed plan, I see nothing else for the convention to do but to defeat the proposal of the so called majority, leaving for the time being the situation the committee was originally faced with, namely, our present plan, and then the convention will have to do the job which the committee was unable to do, which we can then do by adopting one of the remaining plans which I believe are provided for in amendments.

Therefore, the parliamentary situation putting me in this position, I shall certainly now support the minority amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Hart, Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, fellow delegates, I think it is well known to the delegates here that I have had something to do with the introduction of this plan which has been so much discussed. We have been asked why we favor this plan. What are its merits? I think we start out with the premise that the great rank and file of the voters throughout the state of Michigan are not satisfied with the present plan. I think we also recognize the fact that the people of the state of Michigan wish to continue not only in the executive and in the administrative, but also in the judicial branch of our government, the privilege of selecting those who are to occupy positions of great responsibility and authority.

I think I can agree with most of the speakers who have spoken here today upon the theme that what we are most interested in, regardless of where we live and regardless of our politics, is by what method can we select the most competent, the most efficient, the most honest individuals to represent us in every spot and place in our government, the judiciary included.

As all of you know, I come here from one of the rural areas, from the sticks, so to speak. It has been my pleasure and my privilege to be a member of the judiciary on the lower level, in the circuit court, for 30 years. My circuit has not been one of the smallest, neither has it been one of the largest circuits of the state. There has been some time during my incumbency which I have had to spend in other districts, in other circuits throughout the state, both in the lower and the upper peninsulas; in the city of Detroit, if you please, for many, many days. I have enjoyed this work. I have enjoyed this experience. It has also been my privilege and my opportunity to serve on the bench in every one of these districts that are mentioned in the plan which has been submitted here, and I am here to say to you, fellow delegates, that without exception there is in every one of those districts today men in the legal profession eminently qualified to fill the position of a justice of the supreme court. Several of them have done so in many of these districts in the past. Some of them, unfortunately, have gone down to defeat when the time came for them to be renominated and elected; a loss which was suffered to the state of Michigan, I think, through their defeat. I do not wish to indulge in personalities, but I do wish to emphasize that I believe that the state of Michigan has a wealth of material in the lawyers in the state of Michigan in all parts of the state who would grace with dignity and efficiency the position of justice of the supreme court.

Now, one of the reasons why I have advocated this plan is because I have seen many elections of justices of the supreme court, and I know that the voters who have gone to the polls have, in many instances, if not most of the time, voted with ignorance as to the qualifications of the justices for whom

their votes were rendered. And it has been the thinking of those of us who propose this plan that if the justices who were proposed to be elected came from an area nearer to the residence of these particular individuals, they would be much better acquainted with the public and, as a result of that, we prophesy that a much greater interest will be taken in the selection of the representatives of the people from those particular areas.

I mention these things. I have been slow to rise and have anything to say in this argument, and I do so at this time because I know there are among my friends in the delegates at this convention those who are wondering, perhaps, whether I had changed my mind. Emphatically I have not. To me this offers an opportunity for the people of the state of Michigan to express themselves more intelligently at the polls than they had heretofore been able to. It is with that thought in mind that the judiciary will be kept nearer to the people whom it seeks to serve through this plan than any other that has been suggested.

It has been a pleasure, my friends, during my incumbency as a member of the bench to serve in various parts of the state, and it has also been my pleasure to note the interest that is taken by these judges, by the public, in the courts throughout the state.

Now, to come to the point, the question before us is this: shall we support this amendment or shall we turn it down? I believe, my friends, that we should turn down this amendment, and if it later appears that there is presented to this convention a better plan than this district plan, let us consider it then, but until we do have something better before us, let's turn down this amendment. I hope you will agree with me in voting against it.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Bad Axe, Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I think the question that we have before us here today is do we want the people to know who they are voting for and their background, and the right to elect their choice.

We have had some conversation here about this being a lawyers' matter. There are 7,710 lawyers in Michigan, according to the journal, and approximately 8,000,000 people. As I have told you before, I am not here as a lawyer; I am here representing my people back home, and I think what we are concerned with is the people, not the lawyers. The lawyers can take care of themselves. But the people of Michigan can not intelligently vote today on the candidates for the supreme court because they come from widely scattered areas. In fact, the last 2 who were elected or appointed were 1 from Flint and 1 from Sault Ste. Marie. How many people throughout the state know anything about the background or experience of these men?

We have talked here about political pressure. Political pressure does not appear in court decisions, but to those of the lawyers here, we have had many decisions 5 to 3; 3 of one political faith on the one side and 5 of another political faith on the other side.

Mr. Lawrence has asked, is the elective system the best method of selecting judges on a district basis? Any time the people in these districts throughout Michigan select a man, he will undoubtedly be the best qualified in that area. The people in these areas know these individuals intimately, they know their background, except possibly in the city of Detroit. And I want to say that I don't believe that the people in the Wayne county area will have any difficulty in becoming acquainted with their candidates if they are men like Norris, Nord, Ford and Ostrow. I am sure that they will see that the people are well acquainted with them and have an opportunity to determine whether they should be the candidate for the supreme court. I think even Mrs. Judd, who doesn't know her neighbor next door, will be sure to get around the area, if she can be a candidate for the supreme court, and that they will know her and all about her before the campaign is over. So I don't think we have too much to fear if we elect these people by districts, because the people will have an opportunity to become acquainted with those folks who are candidates for public office.

I believe the subject has been pretty well covered here, but I do believe that we are interested in the people of Michigan, as individuals, and if we believe that they have the intelligence to now what is best for them, that we should defeat the minority amendment and get the courts closer to those who the courts serve.

CHAIRMAN VAN DUSEN: The Chair will recognize the gentleman from Ann Arbor, Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow members of the committee, for many of the reasons given by Delegates Everett, Lawrence and Judd, and others who have followed, I am voting for the minority report amendment. Because I believe that there are better plans for the selection of judges that will be presented to this committee, and at that time I may desire to speak at greater length on one or more of those plans. But I am voting for the minority report amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Lansing, Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, before lunch Delegate Ostrow — I see he is not here now, I am sorry to say — said something which disturbs me very much. As you know, I am a bachelor, and he said that you could be going around with a girl for years, but you couldn't tell what kind of a wife she would make until you married her. Well, I would like to say to Delegate Ostrow that that is no excuse for not trying; for not trying to get a plan which has the best chance of getting judges for Michigan, the kind of judges to which the people are entitled.

Now, Professor Joiner, in the con con research study 9, with which we are all familiar, stated,

> Two special qualifications distinguish competent judges from other state officials. One, reasonable legal ability, and, two, independence of thought and action.

Now I know we all agree with the problem of having a judge with reasonable legal ability, but I would like to dwell just briefly on the subject of what we mean by "independence of thought and action," and not in my words but in the words of our chief justice, John Dethmers, when last November he stated publicly as follows:

> Now, one judge appearing recently before the judicial committee of the constitutional convention said we should keep our present system because then it is possible for the people to change the membership on a court and change its philosophy, so that they can get the philosophy that the majority wants at the moment.
>
> To that I would like to respond that justices of the supreme court would do well to put most of the philosophy books back on the shelves and take down a few more of the law books and decide cases according to the law rather than philosophy.
>
> In the other 2 branches of the government, the executive and the legislative, officials should be representing the views and wishes of the majority of the people at the moment, but the judicial office is entirely different. We have constitutional guarantee, a bill of rights to protect the rights of individuals and of minorities, against the power and will of the majority.
>
> Now, how do these constitutional guarantees become effective? Just one way — through the decisions of supreme courts.
>
> And so time and again, when a constitutional right of an individual or a small minority, or any minority, comes up before the court, the court in upholding such a right has to defy or go against the will of the majority. That is their constitutional duty. So the partisan or political views of a judge are not those that are calculated to qualify him for performing that important function, but rather his legal skill, his devotion to the constitution and his understanding of law and its application.

Now, I do not come here to speak in favor of the pure appointment system for supreme court judges, and I realize, as did John Dethmers and the rest of us, that any human

system is going to have some defects, and the elective system of choosing judges has some defects in it because you can't have your cake and eat it, too. Two important defects in the elective process are, first, that it forces an incumbent judge to run against political opportunists, and frankly we know that that makes the incumbent judge subject to the political pressure of the hustings of the stump and of political pressure groups who will seek to support or defeat him in the elective process, and, secondly, we also know that another defect of the elective system in choosing or retaining judges is that the people, unfortunately, do not know the legal qualifications of a candidate, especially before he has served a term upon the bench.

Appearing before the constitutional convention judiciary committee was the director of the American judicature society, who stated as follows: "There have been elections when the voters of Wayne county had the job of choosing among literally hundreds of candidates for the 18 circuit judgeships. Even if—"

CHAIRMAN VAN DUSEN: Mr. Wanger, the Chair is very reluctant to interrupt, but will ask you please to confine yourself more closely to the amendment currently before the house.

MR. WANGER: The amendment currently before the house is whether or not we should scrap the elective process proposed in the district plan and go along with the amendment which is to make no reference, whatsoever, to the specific type of plan for electing judges. Presumably some other plan than we have now or the status quo. My point is, quite simply and directly, that there are defects in the elective system, and, secondly, that under the district plan those evils are intensified rather than alleviated. It seems to me I am expressly on the point.

Now the basic question here which Mr. Winters presented was that even if the number of candidates were within reason, a fair choice among them involves knowledge of their acquaintance with the law and how they handle themselves in court matters that only another lawyer or judge can evaluate, and other things that can be found out only by an investigation that no voter is going to make.

How does the district plan help the situation? Well, it gives us one advantage. The one advantage that the district plan gives us is that it makes it easier for more lawyers to run to be a judge on the supreme court. However, it seems to me that its disadvantages are, first of all, that it intensifies the evil of having an incumbent judge having to run against a political opportunist. We talk about the danger of having a candidate today with money run on a statewide basis. That same candidate with the same amount of money would be twice as powerful financially, or, rather, 7 times as powerful financially under the district plan. Secondly, on a district basis, where the average population is just under 900,000 people for all of the districts except, of course, the one of Wayne, it would make it very difficult, indeed, for the people to go out and find out the qualifications of any of the judges or the candidates even in the district. Third, the district plan would deny to Michigan men of the highest caliber for the bench for the very simple reason that the best candidate available from one district may often be less well qualified than the second best available in any or every other district. Fourth, as has been pointed out, this district plan provides an opportunity for sectional pressures upon the supreme court bench, although the word "balkanization" perhaps over emphasizes this point. Fifth, because of the district, and the way the plan is set up, it presents the legislature with the problem of reapportioning and gerrymandering in the future, which they have a difficult time enough with at the present. And, sixth, it assumes that the lawyer population of the state will remain constant with the rest of the population, something which we have absolutely no guarantee of at all.

Therefore, it seems to me that the district system gives very little in return for the evils which it presents and that we should vote in favor of the minority report amendment, hoping to find a better plan in the future, but realizing that even the minority report amendment would place the state in a better position than does the district plan of the committee.

CHAIRMAN VAN DUSEN: The Chair will recognize the honorary barrister from Allegan, Mr. Farnsworth.

MR. FARNSWORTH: Thank you very much, Mr. Chairman, members of the committee. So that I will not be called out of order, Mr. Chairman, I am going to address my remarks to this one problem of a single "g", because that is what we are discussing at the moment. I am going to speak in favor of the committee report and against the adoption of the minority report amendment.

Now, this matter of g's: the latest national hero last week, I believe, was blasted off from Florida. Newspaper reports indicated that he absorbed 8 g's. Out of that he got 81,000 miles, went into orbit and 3 times around the earth. I submit that this constitutional convention today is getting more mileage per g than did Colonel Glenn.

Everything has been said, possibly, that could be said about the proposal. We have heard about districts and lines and people and Democrats and Republicans and split decisions, but it seems that everyone has overlooked the important fact, the very important fact to me—and this speech is going to be short—that 7 lawyers on a committee got together on a single proposition, and all agreed that it was good. I submit to you that that is the first time in the history of this convention that 7 lawyers have agreed on any 1 point. I further submit to you that that was 35 per cent of the lawyers on that particular committee. At any time, ladies and gentlemen, we can get 7 of these people together, or 35 per cent of them, that is good enough for me. Let's turn down the minority report amendment.

CHAIRMAN VAN DUSEN: For the benefit of our visitors, the question before the committee of the whole is section g of Committee Proposal 91. The Chair will read to the committee a communication which has been received from an anonymous author, "I wish to move that we cause the bell to ring every 5 minutes, so that anyone speaking will know how he monopolizes the time and will wake us all up."

At this point the Chair will recognize the delegate from Detroit, Mr. T. S. Brown. Mr. Brown passes. Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I would like to speak briefly in support of the committee report and against the amendment offered by the minority.

It would seem to me here we may be a little misled by the worry about politics in a particular judge. I am afraid if we seek the judicial candidate that has no politics, no political views, we wouldn't have a very good candidate for anything. It is not a judge who has no political views or politics that we seek here. It is a judge who will judge cases on the basis of law, without worry or without pressure as to the political effect of his decisions.

The recent examples before us indicate, I think, that political consideration may cause a judge to adopt certain views. I think what causes a great deal of difficulty among lawyers and among laymen, is how we go about judging the qualifications of a candidate for judicial office. I don't believe that he need be the outstanding legal light of the state or of the nation, but I believe that a couple of requirements, a couple of qualifications are essential. I think, first of all, he must consider any litigant or any person that comes before him primarily as a citizen and as an individual, without any concern whatsoever, for that person's politics, that person's race, color, creed, or any other qualification or characteristic that that person might have. I think he must accept, too, a fundamental of our political system; that we are a government of laws and not of men. I don't believe that any judge can do what some judges have been accused of doing; of following the election returns, of trying to cater to the wishes of the majority at a particular time. I think that idea has been carried, as we have seen in our time in parts of the world, to the extreme that we have people's courts in China, we have people's courts in Cuba, where the only consideration the judge has is pleasing the majority of the people.

We are a government of laws. All cases must be judged in that manner. If a judge has those characteristics, I believe he will be a good judge. How can we best get such judges?

Certainly not under the present plan, which would appear to be what the minority seeks to achieve here. The present plan, as has been pointed out, is largely an appointive system and not an elective system at all. The appointment, whether in the state or on the federal level, is made by the chief executive officer of the state. I think it has been pointed out to us here that the executive officer of the state is a politican. He not only holds the office of chief executive, he holds the position as head of his party, and I think it is a complete and human impossibility to expect any such person to consider or to fail to consider the political effect that any appointment that he might make would have on his own individual affairs, his own individual chances of being elected, or upon his party's chances of retaining power. I think that is inherent in the makeup of any chief executive.

If we consider the elective aspect of the present plan, we have these candidates running on a statewide basis, nominated by political parties and running on a nonpartisan ballot. I submit to you here that such a candidate cannot possibly avoid the matter of politics. In order to be elected in a state of approximately 8 million people, he must be a political figure. He must have had some publicity of a political nature or he must have attracted the support of political organizations. In doing so he incurs some obligations of a political nature.

I think in our own delegation here we have the best possible example of that. This may be embarrassing to some of the people that form a part of our delegation, but we have among us retired circuit judges who have a statewide reputation for competence and ability as judges. I point out to you that at least several of these people have had ambitions of becoming candidates of the supreme court, and in several instances were, in fact, candidates. I would point out to you, too, that despite the recognized capability and competence, they never had a prayer of a chance of being elected to the supreme bench.

If, then, we have found candidates of proven judicial ability, somewhere in this system that we devise there ought to be opportunity to promote these individuals. Our present system simply does not do that. A competent and adequate judge is not a politician. He takes no particular interest or part in politics because, of course, of the canons of judicial ethics. He makes no political name for himself. If he were to try to run on a statewide basis he would find it impossible to attract the number of votes that would assure an election. Any system we provide here ought to provide a way of recognition of these judicial capabilities, and an opportunity to promote such an individual to a high judicial post.

Six former circuit judges serve with our delegation; 6 men of proven judicial capabilities, and I very much doubt that a single 1 of the 6, barring some political accident, would have had much opportunity for the promotion to the supreme court.

Obviously, then, we have a job of adopting a system, a plan, that would insure the promotion of such individuals. Certainly the minority plan could not do this. I believe the majority plan could, because each of these 6 men we have with us would have been the logical candidate for election from his district, and most likely could have succeeded in being promoted from his district to the highest court; something that at least several of them found impossible on a statewide basis.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Detroit, Mr. Hodges.

MR. HODGES: Mr. Chairman, to the delight of the members of the majority party and to the relief of some of the members of the minority party, I haven't taken the floor in about 3 weeks. At this time I would just like to ask for a division.

CHAIRMAN VAN DUSEN: Mr. Hodges requests a division on the Ford minority amendment. Is the demand supported? It is supported.

The Chair recognizes the gentleman from Detroit, Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, all I want to do is call to your attention, if there is any question about it, that this system is not an innovation. Back as far as I can remember it has been the practice and custom and tradition of the nominating conventions of the 2 parties to pay a great deal of attention to the place of residence of candidates whom they nominated. So we would be merely continuing a practice which the conventions have followed whether the election was to be partisan or nonpartisan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, I want to bring up just 2 points. One, questions coming before the supreme court are not district questions but statewide questions for decision; and 2, we are providing for a court of appeals later on in the judicial section on a district basis, and this should answer the need for district representation at the higher court level. I therefore urge the adoption of the minority report amendment.

CHAIRMAN VAN DUSEN: Mr. Hatch.

MR. HATCH: Mr. Chairman, I would like to direct a question to Mr. Prettie, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. HATCH: Concerning page 3 of the district proposal, starting on line 14, which has to do with the reapportionment every 10 years, Mr. Prettie, is my assumption correct that under the district plan Wayne county would at all times be entitled to 3 justices?

MR. PRETTIE: That is the basis of the plan, Mr. Hatch. It seems to be the key county upon which the apportioning of population for the other areas must necessarily depend.

MR. HATCH: I notice, also, that the other districts may not have more than ½ of the population of Wayne county.

MR. PRETTIE: The plan so provides.

MR. HATCH: Does this mean that if a given county has more than ½ of the population of Wayne county, then it would be entitled to 2 justices?

MR. PRETTIE: That, I think, would be within the discretion of the legislature in making the reapportionment should such situation ever arise, and I think if they had more than ½ of the population of Wayne county they should equitably, but in the judgment of the legislature, be entitled to additional membership on the court with a proportionment readjustment elsewhere. Which, perhaps, raises a further question that you have: what happens to the rest of the districts? Frankly, I hadn't thought that far.

MR. HATCH: I would merely like to comment on this aspect of it. It seems to me that the system provided here for reapportionment and freezing in 3 justices in Wayne county may have a short term advantage for the outstate area, but could conceivably, in the next 30 years, have an adverse effect for the outstate area. In other words, I think we all know that in Wayne county, in proportion to the rest of the state, the tendency is that its population, as compared to the rest of the state, is going down, and that conceivably in the next 30 years we might have 1 or 2 other counties which do have more than ½ the population of Wayne county. If this means that these counties must then have 2 justices, this would be 3 in Wayne, 2 in another county, 2 in another county — there are 7 justices. Does that mean, then, that the other 2 justices would be divided between the remainder of the state?

CHAIRMAN VAN DUSEN: Do you direct your question to Mr. Prettie, or is your question rhetorical?

MR. HATCH: Rhetorical.

CHAIRMAN VAN DUSEN: The question is rhetorical. Mr. Gust.

MR. GUST: I come here to praise nothing that is now before us, and I'm going to be brief. I reached this conclusion by way of logistic syllogism: 1, I will have to vote with Delegates Ford and Nord; 2, this makes me feel very uncomfortable; 3, a fortiori, something must be amiss. There is no good place to go at present. I agree with Dr. Nord that the present system is not a great solution. I disagree with him that there is no good solution, and I am forced to do so until and unless I can see the remainder of these plans that I know

will be ultimately presented before the convention. And so, ladies and gentlemen, let's get on with the business at hand and vote with brothers Ford and Nord; get rid of both of these plans and get on to a plan we can accept. Mr. Chairman, I would like to move the previous question.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford and others to strike section g of Committee Proposal 91. Those in favor of the amendment will vote aye, those opposed to the amendment will vote no. The question, for any late arrivals, is on the Ford amendment to strike section g, on which those who are in favor will vote aye, and those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford and others, the yeas are 69 and the nays are 58.

CHAIRMAN VAN DUSEN: The minority report amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: On the amendment the Chair recognizes its mover, Mr. Kuhn.

MR. KUHN: Mr. Chairman, I wish to withdraw that amendment at this time, and yield to Mr. Lawrence.

CHAIRMAN VAN DUSEN: Mr. Kuhn withdraws his amendment, and without objection it will be withdrawn. The secretary advises that Mr. Kuhn has the absolute right to withdraw his amendment. It is withdrawn. The secretary will read the next amendment.

SECRETARY CHASE: The next amendment on file is by Messrs. Lawrence, Tubbs and Mrs. Judd:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. For all courts of record for which a judicial nominating commission is provided, a vacancy in the office of justice or judge shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appointment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every justice and judge so appointed shall be subject to approval or rejection by the electorate. In the case of a justice of the supreme court and of a judge of the court of appeals the electorate of the entire state shall vote on the question of approval or rejection. In the case of a judge of the circuit court or of the probate court the electorate of the county or circuit in which the court to which he was appointed is located shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for the supreme court and the court of appeals. There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state residing in the geographical area for which the court sits shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state, from among the residents of the geographical area for which the court sits. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, on which the Chair will recognize Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, members of the committee, due to a gross failure in communications, I believe, I still do not have a stand in front of my microphone.

CHAIRMAN VAN DUSEN: The Chair would suggest, Mr. Lawrence —

MR. LAWRENCE: I just wanted to say I will appreciate it if you will be kind enough, if I go back and forth.

CHAIRMAN VAN DUSEN: The Chair will point out to you, Mr. Lawrence, that Mr. Spitler has offered you the use of his microphone which does have the equipment which you desire.

MR. LAWRENCE: I appreciate that. I just feel at home here by my friend, Judge Leibrand.

CHAIRMAN VAN DUSEN: The gentleman will proceed.

MR. LAWRENCE: This is the American bar association plan for selection of the judiciary. It is also known as the Missouri plan. I would like to go into it in some detail with you, assuming that everybody by this time is not a fully qualified attorney. The plan, although it is called the Missouri plan, actually was first used in California, and is now used for the selection of the judges of the supreme court and the appellate courts in that state. Because of a situation that existed in Missouri due to the Prendergast machine, it received additional adoption there because not only was it put into effect in the supreme court of Missouri, but also in the trial courts or the equivalent of the circuit courts in St. Louis and Kansas City. And I might add at this time that, in spite of 2 attempts to have a change of that in the Missouri constitution, both times those attempts were defeated, and the plan is in operation in those states.

The other day we caused to be placed on your desks the proposed amendment attached to which are the reasons. I would first like to go into the situation regarding the election system. As I assume you all know by now, we have only had the elective system in the United States for a little over 100 years. It was not until Patrick Henry came forth with the idea that everybody should be elected to everything that the elective system went into effect. Originally, in the 13 colonies, although they fought the revolution, although they were for a system such as we have in our country at large, judges initially were appointed, and in some of those original 13 states the appointive system is in effect. In other words, just because we elect throughout the country our executive and legislative officers, do not make the mistake in thinking that throughout the country, throughout the United States, the elective system in the judicial system is universal.

As a matter of fact, and I think this is of some importance, the last 3 constitutions adopted do not provide for an elective system, and I refer to Alaska, Hawaii and the one recently adopted by Puerto Rico. Not all of them have adopted the ABA plan. Many of the states still appoint through the system of appointment with advice and consent. The other day, however, Mr. Ostrow showed you a slip of paper on which the New York system was written out, and which, as he pointed out, I think contained more than we hope our entire constitution will contain. I do have in my hand, however, so that you can see the size of it, the provision as to the judicial system in Alaska, which adopted the American bar association plan. It is very brief, it is very concise and very clear, and if any of you would be interested in reading it, while I don't have any extra copies, you would be welcome to this one.

As was pointed out in the reasons, on the first page, there are a number of states using the appointive system in one form or another. Alabama at the present time has put this plan in effect in Birmingham, its largest city, or the largest metropolitan court area. At the present time Iowa, Nebraska and Illinois are submitting certain aspects of this plan. Arizona, Colorado, Montana, Nevada, Minnesota, New Mexico, Oklahoma, Pennsylvania and Wisconsin have drafted the plan for consideration and study. I believe I am entirely correct on this, that no state having an appointive plan for the judiciary is contemplating going to an elective system, and the reasons for this are simple. Only in the United States and in Russia, among the big governments of the civilized world, is there election of judges. The system of appointment has been found to be the proper system for the nature of the judicial office, because one of the things that we strive for in getting judges is to have them free from political influence and pressures. The objective we should strive for, of course, contrary to one of the statements that was made, is to have the initial selection a proper, good selection, and the best that can be obtained. If that is done, the emphasis on removal becomes less important, and I certainly do not agree it is necessary and it is the purpose of this plan, this ABA plan, that the initial selection will be the best to me.

This plan contemplates a judicial commission composed of 3 attorneys elected by the bar. If it is statewide, by the state bar, if it is in a circuit or a county, by the bar in that county. It contemplates the appointment of 3 laymen in the same area, the appointment to be made by the governor; and the seventh man being the chief justice of the supreme court of the state. This judicial commission serves without pay, and in the event of a vacancy it submits to the governor 3 — the names of 3 candidates. Within 60 days after the submission of those names the governor selects 1 from the 3. In the event he does not exercise that power, it then becomes the duty of the chief justice of the supreme court to make the appointment.

You will find, on the second page of the plan, that it is designed primarily for the supreme court, but it is made optional in the lower courts, that is, the circuit court, the probate court, for instance, if adopted by the county or by the circuit to be affected; and since one of our major problems is the situation in Wayne county, it is entirely conceivable that — the same as in Missouri, where only St. Louis and Kansas City have found it advisable or necessary to adopt the plan — it could be adopted in Wayne county, and in Wayne county alone, until the need for the plan arises in other counties.

In the July or in the January, 1962, issue of the Journal of the American Judicature Society it refers to an international conference — it actually was — that was held in Chicago, at which the matter of selection of judges was gone into in some detail. I would like to read to you the statement from page 9 of the consensus of the opinion. Now you understand there were people from all of the 50 states, from Canada, from Mexico and from England present.

> The objective of any method of selection should be to obtain judges free of political bias and possessed of qualities that would lead to the highest performance of their judicial duties. It is indispensable to the proper functioning of the judicial system that men who are to be elevated to the bench be selected solely on merit, on the basis of their qualifications for judicial office.
>
> In the process of their selection, as well as in their work and tenure, they must be free of all collateral influence and partisan political pressures.

Each of the panelists examined the method of selection in use in the various states. Some conferees from states having an appointive system reported that with an enlightened and cooperative governor the appointment of judges of consistently high quality has resulted. This method has the merit of focusing direct responsibility upon the appointing authorities. Even under elective systems most judges have been appointed initially, because in those states the governor has the power to fill the vacancies by appointment.

Criticism was directed mainly at the partisan elective system, and particularly with reference to the metropolitan centers where its defects appear in their most aggravated form. Although the nonpartisan elective system lessens party dominance in the selection of judges, it is not a method to be recommended for securing the best qualified men. The nonpartisan system dissipates the responsibility. Furthermore, it does not prevent interim appointments on a partisan basis. A judge so appointed may be difficult to remove even though unqualified.

The American bar association's plan affords the means of avoiding the weaknesses in other existing methods, while retaining their desirable features. It provides for the filling of judicial vacancies by appointment by the governor from nominations submitted by a nonpartisan commission composed of lawyers, judges and laymen. Tenure of judges so appointed is subject only to vote of the people at a noncompetitive election. This relieves the judge from the necessity of campaigning for office against opposing candidates, but still requires him to answer to the electorate. These 2 distinctive features tend to assure selection and retention of the best qualified judges. In the plan that is submitted here, at the end of the term of the judge, the judge would run at a nonpartisan election solely on this question, which would be very simple for the people to answer, "Shall Judge Blank be retained or shall he not be retained?"

I think the results that we have had in Michigan regarding the ABA plan are particularly significant. I have been unable to lay my hand on the one paper I wished, but at the annual bar association meetings, whenever the ABA plan has been brought for vote to the membership it has been defeated. At our annual conference there are at the most about 500 attorneys present, and it is very easy for organized groups to control the action at the annual conventions. But on 2 occasions the state bar has been polled at secret elections, their ballots are secret. The first of these was in 1953, and somewhere in that pile of papers on my desk is the results of that poll. My recollection is that it was 2407 in favor of the ABA plan and 2057 in favor of the present system.

On December 20, 1961, in an effort to cooperate with the constitutional convention, another poll was taken of the members of the bar in Michigan. In this poll the Missouri plan, the ABA plan, was preferred by 2,577 attorneys, as against 1,795 in favor of the present plan, and 531 for lifetime appointment by the governor with advice and consent of the senate. In other words, the ABA plan was preferred by more of the attorneys than the other 2 plans together.

In spite of the fact that the results of that poll were made known to the committee in this case, it gave no consideration to this plan. Quite recently a letter was received from the president of the Detroit bar association, was sent to Delegate Prettie. The letter was dated February 15, 1962. In this vote that was taken by the state bar, the ballots that were sent to Wayne, Oakland and Macomb counties were of a different color than those throughout the state. So it was possible to determine what the vote in the metropolitan area was. It is interesting to note — and, incidentally, the Detroit bar is the largest bar by far in the state — I noticed that, for instance, it must compose at least ½ of the bar, and perhaps more. The metropolitan area vote was as follows: appointment by the governor under ABA or Missouri plan, 1,731 against 1,056 to retain the present system and 354 for lifetime appointment by the governor with advice and consent of the senate.

Again among the attorneys who should know the situation as it exists in the courts, the majority were for the American bar association plan over the 2 others combined, and in the — as it applied to the circuit court, the vote in the metropolitan area was 1,592 over 1,397 and 110 for those 3 plans. Now, it shows that the attorneys, when they are called upon to vote in a manner that is consistent with our American experience, in other words, in a secret ballot, and in the area that is most vitally concerned, namely, in the southeastern portion of the state and the metropolitan area, not only did they favor this plan for the supreme court, but also for their lower courts.

Now, I believe that that concludes the presentation I wish to make. You have the material that was distributed. You have not only that for but against, and if we are to take in

this convention a forward step to correct not only the present system with its defects — which, after all, you know has the worse features of both the appointive and elective systems — you have heard expressions that our system is the best, but, after all, we have under the present system an appointment made by the governor without any responsibility to anybody; no advice and consent. He doesn't have to explain the appointment; he can use it for any purposes he pleases. That is why in the appointment system it is one of the bad features, and in the elective system we now have that where the candidates go to the polls, and one of them, even though he may only have recently been appointed by the governor, is entitled to the incumbency label, which, as one of the witnesses before the committee stated, in his opinion, one of the judges, it was worth 25 per cent of the votes.

We ask that this committee seriously study, consider and discuss the merits of this plan.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, do the other cosponsors of the amendment seek recognition? Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I just want to second everything that Mr. Lawrence has said, and add that if you are looking for an ideal plan for a constitution for the selection of judges, this is it. Nobody in the country has ever adopted or come up with any plan that approaches it so far as assuring the independence of the judiciary is concerned, and it seems to me that should be our principal concern. Thank you.

CHAIRMAN VAN DUSEN: Mrs. Judd, do you seek recognition on your amendment?

MRS. JUDD: Only to say, Mr. Chairman and members of the committee, that in backing this proposition I feel that I am representing my fellow laymen throughout the state. There are others besides lawyers who are concerned with this matter. As you know, the Michigan league of women voters appeared before the judiciary committee and made a strong appeal for this type of system. The committee for a sound constitution has also come out for a similar plan, and my own Republican party in the county of Kent, in its discussions and in the polls that it took last summer, also favored an appointive plan.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Lawrence and others, the Chair will recognize Mr. Everett.

MR. EVERETT: Mr. Chairman, I would request that the matter in front of us be divided, as it presents a manner of selecting both supreme court justices and a permissive manner of selecting circuit and probate judges. Really it can be divided, and seems to me should be.

MR. LAWRENCE: Mr. Chairman, I wonder if this might make any difference? Mr. Everett, there are 3 amendments in together. The first one is the one you refer to. The second one limits the plan to the supreme court and the appellate court, and the third to the supreme court alone.

MR. EVERETT: Well, it appears to me, Mr. Chairman, that it should be divided for this reason: the first plan simply allows a county or circuit by referendum of the people to select this plan. Now, the county from which I come, I don't think they would select it, but I see no harm in the constitution giving the people that right, and I wouldn't bother that right. In fact, I would be willing to vote that it be in the constitution so that if some day the people want that system they can have it. But this is an entirely separate question from the mandatory provisions that the supreme court and the court of appeals must be selected this way.

CHAIRMAN VAN DUSEN: Mr. Everett, if you persist in your request the question will be divided. The secretary advises the Chair it would be somewhat easier to proceed in the order suggested by Mr. Lawrence, but the decision is in your hands.

MR. EVERETT: If we are going to go from the third proposition forward I can see doing it that way, but if we are going to have to vote on the first, I don't see how I can vote upon it.

CHAIRMAN VAN DUSEN: Mr. Everett requests a division of the question, and when it is presented it will be divided. As the Chair understands it, Mr. Everett, you request it to be divided as to the supreme court, the intermediate appellate court and the inferior courts?

MR. EVERETT: I was only thinking in terms of dividing it beginning with the second sentence of the third paragraph on page 4. If it requires further division, somebody else would have to suggest that.

CHAIRMAN VAN DUSEN: The Chair's pagination is not identical to yours, Mr. Everett. Would you state the substance of what you seek to have divided?

MR. EVERETT: Yes. We were given a collection of the pending amendments to Committee Proposal 91. Page 4 of this collection is the amendment proposed by Messrs. Lawrence, Tubbs and Mrs. Judd, which includes reference to the circuit court, probate court, and while there is some reference to them in the earlier paragraph, this could be reinstated very easily, and it seems to me the division which I would like to see, at least, begins with the second sentence of the last paragraph of that page, starting "There shall be a judicial nominating commission for each circuit court", and so forth.

CHAIRMAN VAN DUSEN: The question will be so divided when it is presented, Mr. Everett. For what purpose does the gentleman rise, Mr. Yeager?

MR. YEAGER: Mr. Chairman, I request a division vote.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division. Is the request supported? It is supported.

On the amendment offered by Messrs. Lawrence and Tubbs and Mrs. Judd, the Chair will recognize Mr. Norris. Mr. Norris not being present, the Chair will recognize Mr. Iverson.

MR. IVERSON: Mr. Chairman and fellow delegates, I rise to oppose this proposed amendment, which proposes that Michigan adopt the form of the Missouri plan or the ABA plan for selection of justices of the Supreme Court of the state of Michigan. In the first place, the testimony of Mr. Glen Winters, executive secretary of the American judicature society, was presented before the committee on judicial branch of this convention, and he urged the adoption of some such plan most strongly. He pointed out that the American judicature society, for which he speaks, had been urging the adoption of this plan for almost 50 years. While it has received the appellation of the Missouri plan, it has actually been adopted for the trial courts in only 2 counties of that state. It was adopted there because of the corruption of the courts and their control by lawless elements in Missouri's largest cities.

No such situation has existed in Michigan. We hope it never will. Our nonpartisan method of selection of our judiciary has been firmly established as a part of our court structure ever since 1939. The principle of nonpartisan election has overwhelming support among the voters of this state. It negatives the need for the ABA or Missouri plan.

The cynicism of the proponents of the ABA plan is demonstrated in an article appearing in the December, 1944, Journal of the American Judicature Society, volume 28, page 108, wherein an article offered by Glen Winters states:

> Once a good judge has been put on the bench he ought to be able to keep his seat indefinitely, until death, retirement or resignation. The vote on retention in office is intended and expected hardly ever to interfere with the operation of that rule. It remains to be proven whether the voters can exercise any better judgment on the issue of reelection than on the original election. There surely are few people who believe that very many voters will go to the polls with more information about the average judge than as if they had the job of selecting him in the first place.

Mr. Winters pointed out in his address before the Genesee county bar association, November 6, 1961, and in his testimony before the committee on judicial branch of this convention, that despite the efforts of his society to promote this plan, it has been accepted in full or in part in only 5 of the 50 states. In 1934, it was adopted as to appellate courts, and only as to certain features, in California. In 1940 it was adopted in Missouri as to appellate courts and as to trial courts only in 2 counties of the state where the corruption of the judiciary shocked the conscience of the public.

Mr. Chairman, it seems to me there is a lot of talking. I don't know whether they want to hear me. If they don't, I would like to have them step out in the hall.

CHAIRMAN VAN DUSEN: The committee will be in order.

MR. IVERSON: In 1950 it was adopted only in part in Alabama. In 1958 it was adopted in Kansas as to the supreme court only. In 1958, in the new constitution of Alaska, it was adopted in the absence of any precedent such as we have in Michigan for nonpartisan election of the judiciary.

Mr. Winters asked and answered a question in the minds of most delegates in the following language:

> Some people have asked why, if the combination plan is so meritorious, it has not won wider acceptance during the half century the American judicature society and others have been promoting it. The answer is, in part, that it strikes at the heart of our system where changes will never come easily, and, in part, it takes an important segment of political patronage out of the hands of political organizations.

Very early in the deliberations of the committee on judicial branch the question was raised as to whether there was anything so sacrosanct about our courts that the voters of this state should be deprived of their franchise in selecting the judiciary. The same question was posed to Mr. Winters before our committee, and in his presentation on December 14, 1961, Mr. Winters had this to say:

> I suppose it is a natural inquiry to ask if there is safety in numbers, is there not the greatest safety in the greatest number, namely, the entire electorate of the state? Well, that does not follow at all, and it runs into conflict with the third principle which I offer for your consideration; that it is undemocratic to impose upon the democratic processes burdens it is not equipped to bear. There are things the voters have a fair chance of passing judgment on, and these should be left to them. There are many more as to which they do not have adequate opportunity to form an intelligent judgment, and these a well planned governmental system puts in the hands of smaller groups or individuals who, in turn, are responsible to the people for the way they exercise that delegated power.
>
> Although others of the witnesses you have heard would disagree, I suggest to you that the determination of the qualifications of a candidate for judicial office is in the latter group.

These statements indicate the continued attitude of the American judicature society toward the intelligence of the voters. But despite this fact, we must keep in mind the very heart of the ABA plan is that after nomination by a blue ribbon commission, and appointment by the governor, the voters are then called upon to determine whether a judge shall be continued in office on the basis of his record.

I agree with Mr. Winters that if the voters cannot intelligently choose the man who shall judge them in the first place, they are certainly not better equipped to pass upon their records after they have been upon the bench. But I submit that under a nonpartisan system the voters can and do act intelligently. I submit, further, that the whole argument for this plan falls when one considers that the state is fortunately possessed of a huge reservoir of retired judicial manpower available to fill vacancies on our courts as they occur until the next general and nonpartisan election. Such persons under the plan submitted in the majority report would be ineligible to run for election for the unexpired term, and thus the people are left free to select competent judges to fill vacancies, and must retain this basic right of free citizens, in a free society, to a freely elected judiciary.

The committee on judicial branch was privileged to have before it the testimony of several members of the supreme court of this state. Of those who so appeared, only Justice Dethmers favored the adoption of the ABA or Missouri plan. Justice Edwards, then on the bench of our supreme court, in his prepared statement to the committee on November 1, 1961, made statements which I will not repeat, but which were stated to you this morning, and Justice Black, as early as May 24, 1961, presented to the members of the judicial selection and tenure committee his draft of a new judicial article. He made no provision for adoption of the ABA plan, but continued the principle of nonpartisan election. Later in July, 1961, he subscribed to the principle of a nonpartisan election on the district basis, and he has continued his support of this plan. Again earlier this morning his questions and answers were given to you by Mr. Prettie, and I will not repeat them. Justice Adams stated before our committee on January 17, and I don't recall that this was brought to your attention:

> With reference to the present system of nomination and election of judges, and particularly supreme court justices, I believe that the present system is the best of any now advocated. If the statewide primaries and their attendant expenses are to be avoided, some responsible group must carry out the nomination of the justices of the supreme court, and under the Missouri plan, or any possible modification thereof the group proposed, in my opinion, is far too restricted. On the other hand, the delegates of our 2 major political parties constitute a sufficient wide cross section of the electorate to assure the selection of reasonably good candidates, who then must submit themselves to the people for the final test.

He strongly advocated the election of judges and justices.

Justice Souris appeared also, and that testimony was repeated this morning, and I will not again repeat it.

Justice Kavanagh appeared before our committee on judicial branch November 2, 1961, and expressed his total lack of agreement with the Missouri ABA plan. He said:

> Advocates of the so called Missouri plan and other similar plans forget that this was the method of selecting judges both in England and on the continent of Europe for centuries. They have a system in Russia and Cuba today where a small clique selects the judges and influences their decisions. Russia provides in its constitution for the same freedoms and liberties we have here in the United States of America. The reason we enjoy those liberties and they do not is that we have a free judiciary, elected by the people and subject only to the people to preserve them and protect those rights and liberties.

He further said:

> How many know that Michigan, in establishing its judiciary, was one of the pioneers in leading the way that was eventually followed by all states of our nation in electing on party tickets the members of the judiciary. Most states followed shortly thereafter.

He also said:

> The Missouri plan includes only supreme court justices, 3 appellate courts, 2 circuits in the cities of Kansas City and St. Louis. Others, although having the option, have not seen fit to adopt it. Independence of the judiciary is not obtained under the Missouri plan. The select committee, being few in number, is easily subject to pressures from all sources, political and otherwise. Under it the commission of attorneys and laymen would name a list of judicial nominees, and the governor would pick from this sacred list. If the committee was composed of friends of the governor and knew whom the governor desired to appoint, quite naturally they would put that individual on the list. What happens if the governor refuses to appoint a man to the vacancy until such time as the list is changed to include someone he could in good conscience appoint to such a sacred trust? After the appointment, in place of being independent, the judge chosen would naturally be beholden to the members of the committee.
>
> In my opinion a good judge, a competent judge, a judge who is conscientious in carrying out the responsibilities of his office need not fear election by the people.

The state of Illinois has for many years elected justices of its supreme court by districts, and I will not again burden you with that because it was given to you this morning; the testimony given before our committee. It is further significant that the committee on court administration of the state bar of Michigan, in its 1961 report published in the Michigan State Bar Journal for September, 1961, at page 48, recommended:

> . . . that the present system of nominating and electing

supreme court justices be retained; the same provisions to apply to judges of the intermediate court of appeals, if the latter court be established by a new constitution.

This committee was chaired by Circuit Judge Noel Fox, and included among its membership, Court Administrator Doyle, Justices Edwards, Kavanagh, Souris, along with many other circuit judges and eminent attorneys. No place in the report did they favor an adoption of the ABA plan. Our committee also had the benefit of the testimony of Judge Michael Carland, and I believe that was referred to this morning.

Other witnesses before the committee on judicial branch echoed the sentiments of the eminent witnesses I have quoted. But let us look to another source, the testimony of those who use our courts. As you all know, the state bar of Michigan, in its efforts to be of service to this committee on judicial branch of this convention, presented a questionnaire to its membership. With reference to circuit judges, the bar voted to retain the present Michigan system by a vote of 2461, and for the ABA plan, 2237. With reference to the supreme court justices, 1,795 favored the present Michigan method, 531 favored lifetime appointment by the governor, and 2,577 favored the ABA plan. In evaluating these results, however, it must be kept in mind that simultaneously, as was pointed out this morning, strong argument was independently sent to the members of the bar urging adoption or approval of the ABA plan.

With these facts before you, fellow delegates, I submit, 1, that the nonpartisan principle of election is well established and strongly favored by the voters of this state; 2, that there is no such judicial corruption as would require the discarding of this established system, and the institution of a blue ribbon committee with subsequent appointment; 3, that the justices of our supreme court, representatives of the association of judges, and committees of the state bar of Michigan which have had this subject under study, do not favor the adoption of the ABA or any other appointive plan; 4, that the committee on judicial branch of this convention early in its deliberations voted 18 to 3 against any plan for appointment of the judges of our courts; and 5, that this convention should confirm the decision of this committee.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, the Chair will recognize the gentleman from Saginaw, Mr. Shackleton. Before Mr. Shackleton begins, the Chair will advise that pursuant to the request of Mr. Everett the question has been divided in the following fashion: the first question which will be presented is the question of the use of the ABA plan for the supreme court and intermediate appellate courts, which is the language found on page 5 of your sheets. The second question presented will be the use of this plan on a referendum in counties, where it is used on a referendum basis for circuit and probate courts only, which will be the amendment proposed on page 4, from which certain words will be stricken; those words being "any reference to justices of the supreme court or judges of the court of appeals." When we get to that point, the secretary will read the amendment, but the Chair thought it may be helpful to you to know in advance in what fashion the question will be presented.

Mr. Shackleton.

MR. SHACKLETON: Mr. Chairman, a short statement, if I may, and a question through the Chair to Mr. Lawrence. We have been told there are less than 8,000 lawyers in the state. That is less than 1/1000 per cent of the state population. Mrs. Judd has told us that there are 2 organizations which support the proposed amendment now, each of which combined, or the 2 combined, do not have as many members in their membership as the bar association. My question to Mr. Lawrence, please: what evidence do you have from within Michigan that the average citizen, or particularly the average voter, has in the least, an interest in what the bar association thinks or what their polls indicate?

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Shackleton, either I misunderstood you or you misunderstood some figures. It is my understanding there are in the neighborhood of 9200 attorneys in the state. I don't know whether it makes too much difference in your percentages, but I will say that there are considerably more than 1,000 attorneys.

MR. SHACKLETON: No. I think I said 8,000.

MR. LAWRENCE: It sounded like a thousand here.

MR. SHACKLETON: One-thousandth of one per cent of the population.

MR. LAWRENCE: Mr. Shackleton, you have asked a difficult question to answer. I will try to answer it. It is difficult to answer because some of this is not documented. Over a period of about 12 years I have received a number of letters. My file contains numerous editorials, particularly shortly after judicial elections, not confined entirely to Wayne county, but primarily from Wayne county. Those letters, received by the state bar in many cases and forwarded to me, indicate an interest on the most part of the people who do not come into court all the time or frequently, the way attorneys do, and who aren't familiar with the court, but have been perturbed at the fact that they have been asked to vote for candidates of whom they have no knowledge.

The situation could be compared to that which we faced when we ran for office where, in spite of the efforts of our 2 major political parties, it seemed impossible to get a large segment of the voters out to vote, and yet I have felt, really have felt — and I think others agree with me — that the people were interested in this constitutional convention. I think that they felt one way or the other about it. But they were asked to vote on something that they didn't understand and, as a result, they felt that way about the candidates.

I have 2 ballots here, 2 sample ballots. One is this ballot in Wayne county, the Democratic primary in 1935, that brought about much of the change. I don't know that it is possible to see it around this room, but there were 18 candidates to be selected, and on that list — that is, they were to run in the finals. This was just the preliminary heat, so to speak. On that page there are 181 candidates. You can go down through the list of those candidates, you see similar names. If anybody presented a thing like that to me in the ballot box when I went to vote, I think I would walk out. After that ballot there were numerous letters received. There were numerous editorials and articles in the papers. As a result of that an effort was made to correct it by making the election nonpartisan, and by putting in the incumbency designation. However, in the biennial spring election of April 6, 1959, the last general judicial election in Wayne county at which there were candidates for the supreme court, circuit court, recorders and common pleas, the voters who went into the voting booth — and I believe in Detroit now it is all by machine — were faced with a ballot that had 63 candidates on it for the positions. Now, it is when the voters have received these that — when these situations have arisen — the letters have come into the bar and the editorials have appeared in the papers.

That is all I can tell you about it.

MR. SHACKLETON: One further question, Mr. Chairman, please. You have indicated you have had letters or editorials indicating dissatisfaction. Did any of them indicate a preference for appointments?

MR. LAWRENCE: I would say not. That is, that wasn't the objection.

CHAIRMAN VAN DUSEN: The Chair will recognize the chairman of the committee, Mr. Danhof.

MR. DANHOF: Mr. Chairman, in response to some statements made by Mr. Lawrence, I think Mr. Iverson covered some of them, but I should say for the members of this committee that this plan was seriously considered. It was not only expounded by the several justices of this state, but by the national spokesman for the plan, Mr. Glen Winters. I do not know how they could have had further or more detailed or forceful spokesmen than those 2.

As Mr. Iverson stated, the committee not only rejected an appointment system, but took a particular ballot on the ABA plan, and it was the overwhelming vote of the majority of the committee that there was no real need for a change, and that the people should have the voice in selecting the justices of the supreme court. It was pointed out, and rightly so, that the

courts are not necessarily just for the attorneys, but that they are for the people, and that Michigan historically has taken a lead in the nonpartisan election of judges, be it on a local trial level or the justices of the supreme court. We considered the plan, and we had numerous spokesmen for it, and I say Mr. Lawrence is being completely consistent, and he advised me very early that this was the only plan he would vote for, and regardless of what the committee came out with he would not approve it, and if we did not come out with the ABA plan he would present this as either an amendment, as a minority or, as he has, an amendment by getting 2 cosponsors. The same is true of Mr. Tubbs.

I can only state that the committee considered it. We believe the people should have the right to vote upon the election of supreme court justices. Therefore, I would urge the rejection of the amendment.

CHAIRMAN VAN DUSEN: On the amendment, the Chair will recognize Judge Dehnke.

MR. DEHNKE: Mr. Chairman and delegates, every day we are reminded that a lot depends upon the point of view, and that reminded me of a story a friend of mine recently told me. He said last summer he overheard a conversation between 2 house flies. They were discussing the idiosyncrasies of these creatures that call themselves people. Said one fly to the other, "Look at those crazy people. Here they spend all that money building ceilings and then they walk on the floor." (laughter)

I would like to emphasize just one point that I think is important in connection with the proposal. The clinching argument in favor of this plan is supposed to be that it will take the selection of judges out of politics. I think on analysis this is the very thing it does not do, because it leaves the appointment eventually and ultimately to the governor, where under the current practice politics becomes the controlling consideration. It starts with a nominating committee. Here we have a nominating committee called upon to select 3 nominees, and the first thing they say to each other is, "We have got to take at least one from the governor's party or else we will be accused of playing politics." And, of course, that particular nominee automatically becomes assured of the appointment. The choice is limited? Is it in fact? The governor cannot be compelled to name any of the nominees. He can hold it up and refuse to act until a new list is submitted which eventually contains the name of the person he wanted in the first place. That is exactly what happened at least once in the state of Missouri.

I wonder, as I have said to you privately before, whether we're not making a mistake in concentrating all of our thinking on lawyers and judges, and forgetting about the jury. To me this is the least acceptable of the so called appointive plans. Thank you.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, I made inquiry regarding the number of people asking to speak. I had hoped that we might get a vote on this particular amendment before I requested the committee to rise. I understand there are 3 on the list.

CHAIRMAN VAN DUSEN: The Chair would advise that he has at the moment Messrs. Hodges, Ford, Leibrand and Lawrence seeking recognition.

MR. DANHOF: If these people could make it short and if we could get on, I would like, if possible, to take a vote, but if we will be here too long, why, we would have the committee rise. Shall we try for another 2 minutes?

CHAIRMAN VAN DUSEN: The Chair recognizes Mr. Hodges.

MR. HODGES: Mr. Chairman, I am going to address my remarks to the laymen in the audience, since it seems to be the popular thing for attorneys to do. As an attorney I vote in the bar polls along with the rest of the attorneys, and seldom do I seem to win. Yet when I go to the polls and vote with the rest of the people, I seem to do pretty well. So for that reason I would be, out of hand, opposed to the present plan that is being proposed.

I think what we have got to realize here is that attorneys, besides being experts in the legal field, are also individuals with biases and prejudices the same as anyone else, and that a majority of attorneys, by the very reason they are professional men, are of a certain economic status, and even, to a certain degree, a majority with the same philosophical sense, and it seems to me you can never divorce your philosophy and your economics from your expertise, and for this very reason I think that all the people, since it is all the people who are being judged in the last analysis by our judiciary, should have a voice in selecting their judiciary. For that reason I stand opposed to this amendment.

CHAIRMAN VAN DUSEN: The Chair recognizes the gentleman from Taylor, Mr. Ford.

MR. FORD: I rise to oppose the amendment. I want to say that Don Lawrence has been honest and straight forward in his preparation. He makes no bones about the fact that this is the culmination of 12 years of work on his part, as a member of the very influential committee of the state bar to bring the Missouri plan to Michigan. He has consistently maintained his position from the beginning, and although we disagree with him, we know him, respect him for his integrity and for the sincerity with which he presents his plan to us.

However, I think it is a misnomer to call it the Missouri plan, because it really isn't. In Missouri, when they adopted this, they discovered that they had so worded it — and Mr. Winters indicated to us that this was done by mistake — that it was found to be a local option provision. In other words, each county has the option of continuing to elect its judges or accepting the so called Missouri plan for selection. In those 2 counties where they had very vicious situations arising out of machine politics and a lot of scandal the people were ready for almost anything that offered relief from it, and they accepted it. As a matter of fact, I don't think it is quite correct to say it is in 2 counties, because I understand in St. Louis county it applies within the city of St. Louis but not with respect to the county at large. I am not positive of that, but this is my understanding. It has been in effect in those 2 places in Missouri for 20 years, and no other part of the state has seen fit to adopt it.

Mr. Winters, the foremost exponent of this plan, admits that they have tried consistently and they have never ceased to urge upon the people of Missouri that this is working so wonderfully in Kansas City and St. Louis that everybody ought to have it, but the people of that state have not seen it as any great improvement; at least they haven't seen it as a great improvement to the extent where they have been willing to vote to give up their right to select the judges at the ballot box.

This matter has been debated by lawyers and nonlawyers for many years, and I think every lawyer goes through a metamorphosis on this question, at least the younger ones of us here. We get brainwashed about this in law school, and you don't realize to what extent until you get out and get involved ever so slightly in politics by becoming a con con delegate. I think that if you take a poll of college professors, law school professors, that you would come up with almost a 99 per cent yes vote for the Missouri plan. I am getting chuckles from one back here now.

College professors have a strange and almost morbid fascination for the appointment of judges, because very frankly they just don't have very much confidence in the average voter. Now, for many reasons they don't go out and openly say it, but what they really are motivated by is the strong opinion that the citizens are not smart enough to determine their own affairs. In other words, strange as it may seem, the professors charged with the duty of teaching the young people of this country to support the constitution do not really believe in democracy in its pure sense because they feel there are some things you ought to take away from the people because they are not smart enough to handle them. One of them is the selection of judges. By the same token, college professors and law students, not having been continually exposed to the courts as litigants and practicing attorneys interested in the outcome of a case, have a tendency to pick at the courts, perhaps a little

bit more than the rest of us, and they become dissatisfied with what they consider to be less than 100 per cent efficiency, and they point with terrible disdain at the occasional judge who doesn't measure up to their standards. But when you talk to the attorneys who are actually fighting it out from day to day in the practice of their profession, I don't think you will find a lot of attorneys criticizing the quality of our bench. Quite the contrary. I find that in my area, at least, in talking with my contemporaries, they are pretty generally satisfied across the board. There are exceptions, of course.

To finish this up, I would like to read from the Rotarian magazine for June of 1961, where this matter was debated by 2 prominent attorneys, this very brief paragraph:

> Recent authoritative views on this question voiced by some members of the bar may be reduced to 3 basic goals which they allege are wanting in the elective system — namely, how to select the best qualified men for the position of judge, how to get them on the bench, and how to keep them there. These authorities simply beg the question when they gratuitously conclude and assume that the first goal — the selection of qualified men — cannot possibly be attained through the elective method, and thus, inferentially and without proof, sanctimoniously attack the integrity and fidelity to their trust of the leaders of both political parties who nominate judicial candidates.

There is one other observation which should cheer the nonlawyers up just a little bit, because this fellow writing the article is a prominent attorney with more than 20 years practice before the appellate courts in Illinois, and since he is taking a little jibe at the lawyers I thought it was too good to pass up for the benefit of my nonlawyer friends. He is discussing the Missouri plan and the selection commission which consists of eminent members of the bar, who, perish the thought, have no prejudices and I assume no emotions, and are perhaps even neutral about the taste of food and sex, I suppose.

> The contingent from the bar association does not reflect the sentiment of the lawyers in the state, let alone the people . . . .

And this is important, and this is something that you have to realize as nonlawyers, because occasionally I have nonlawyer friends who assume that because I am a member of the bar I subscribe to the philosophy enunciated by the very small minority that Mr. Lawrence, himself, alluded to.

> Most bar associations are controlled by powerful minorities, usually aligned with large firms and vested interests . . . .

Excuse me, Mr. Chairman.

CHAIRMAN VAN DUSEN: Guilty on both counts, Mr. Ford.

MR. FORD: I will try to be more careful and edit this a little.

> . . . who guide the policy of the association in conformity with their respective philosophies. Secondly, the vast majority of lawyers are informed of the qualifications of judges purely through heresay, similar to the laymen, for the reason that comparatively very few members of the bar are ever involved in courtroom litigation.

You might get an interesting reaction if you took a poll of the first 200 lawyers that you find in the phonebook to find out when was the last time they appeared in front of a jury or in an actual trial before a judge in a court. It might be quite surprising to the laymen just what statistics you will discover. This is particularly true in the big cities.

> Also, the values of the bar are not necessarily identical with the values of the people whom courts must serve. This is only to suggest that what lawyers value in each other and in judges may not be the same as what a layman values in his judge.

And he finally concludes this by saying:

> This is not to say that bar associations do not serve the legal profession, the courts, and the communities in many other areas; but just as students should not have the right to vote concerning the selection or retention of their teachers, so also the lawyers should not have the right to turn the selection or retention of judges into a popularity contest.

CHAIRMAN VAN DUSEN: The gentleman from Bay City, Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, the debate is going to my satisfaction, so I will yield to the next speaker.

CHAIRMAN VAN DUSEN: The gentleman from Ypsilanti, Mr. Lawrence.

MR. LAWRENCE: I will make this as brief as possible. Let me tell you, there is an axiom that if you advocate judicial reform you must not be shortwinded. It takes a long time. Judicial reforms have been and should be done deliberately, and changes should not be made without full discussion and consideration. I do, however, want to speak to the laymen. I want you to know that I say this sincerely, in view of some remarks that were made by Judge Dehnke, that the courts were not solely for the lawyers, and we have forgotten the jury. Please believe me when I say this to you, that it is in an effort to see that our clients get justice that the bar as a whole is interested in seeing the best possible courts. The bar is not interested in running the courts. At least I have not found that to be the case. But the members of the bar are concerned when they feel that their clients do not receive the best treatment, the best considered opinions; and I think that the bar of Michigan would have been remiss in its duty to the people of this state and to this convention, if it were not interested in doing what it can to improve the system, and I think you people, as laymen, have a right to look to the members of the bar, because of their familiarity with the courts, to advise and recommend to you. I don't think it is presumptuous on the part of the bar. I think you have a right to expect the bar to do it.

But don't be fooled into thinking that you have an elected bench in Michigan. As you people who come from throughout the state think of your judges, both probate and circuit, and how many of them in your counties originally got on the bench by election, I'll venture that there are very few of you who know of judges in your circuits who, in your own counties, came on the bench originally by election. We have an appointment system without any responsibility whatsoever, followed by an election, which is, of course, the situation with the ABA plan. And let me call to your attention again that 5 out of 8 members of our present supreme court originally came on the bench by appointment. Thirteen out of 18 of the Wayne county circuit judges originally came on the bench by appointment; 8 out of 10 of the recorders judges, the same way, and 7 out of 9 of the common pleas judges. So don't believe it when you are told you have an elective system.

CHAIRMAN VAN DUSEN: The gentleman from Bad Axe, Mr. McAllister. The Chair would advise there are just 2 speakers seeking recognition, of whom Mr. McAllister is the first.

MR. McALLISTER: I oppose this amendment first, because the people of my area are opposed to it 5 to 1. Second, I am opposed to this amendment because it is based on the fact that the people are too ignorant to make a determination themselves. I am also against it because it is an appointive trend. It seems that a considerable number of people seem to think that everybody should be appointed. We won't have any political system if this continues. In fact, everybody will be appointed, and we will have no political party at all. I recommend that the amendment be defeated.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Faxon.

MR. FAXON: Following the path of solicitor Farnsworth here, I have heard so many fine appeals from the lawyers to the nonlawyers in the convention that I am much moved by all this talk to at least make one comment. I am sorry that we already concluded the educational article, because I think that if we could have generated such a strong feeling among the members of the teaching profession here for the selection of teaching officers in the state we might get something different in that line. I should think that the teachers might like to select their superintendent.

A DELEGATE: Point of order.

CHAIRMAN VAN DUSEN: Mr. Faxon, a point of order has been raised —

MR. FAXON: Yes, I just want to comment on one thing, if you will forgive me. I have kept quiet on this judicial article for several days, and Mr. Hoxie has been needling me all the time on this, but the argument has been advanced on this argument that we have had judges appointed, and what we have now is political consideration in the selection of the judges. I was sitting here thinking that it is unfortunate that this has to occur; that perhaps it might be in line for judges when they take office to sign an oath that during the next 8 years they will not get sick, they will not die, they will not leave office for any reason. I can't understand why the objection to appointment of a judge if he can't finish out his term of office. I fail to see that this represents any valid argument for changing the system insofar as this method of selection is concerned.

And I wish to make one final comment, and I think this is the impression that has been given me here. Under this plan a blue ribbon committee consisting of members of the professions are going to make the selection. I think our experience in this country has been largely that of respect for the people to make these decisions and not turning it over to any private group. I, for one, wouldn't want to see the educational function turned over to teachers, even though I am a teacher, and I wouldn't want to see the judicial function turned over to lawyers. I feel that the ultimate judgment and the wisdom of the people has in our past proved the best.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd. Pursuant to the request of Mr. Everett the amendment has been divided. We will put first the portion of the amendment, which is most easily found by turning to page 5 of your list of amendments under item 2 dealing with the use of a method of selection for justices of the supreme court and judges of the court of appeals. The secretary will read the portion of the question on which the vote is now to be taken.

SECRETARY CHASE: This is on page 5 of the pending amendments to Committee Proposal 91, item 2 on the page. This portion of the amendment reads as follows:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. A vacancy in the office of justice of the supreme court or judge of the court of appeals shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appointment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every justice and judge so appointed shall be subject to approval or rejection by the electorate. The electorate of the entire state shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for the supreme court and the court of appeals. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment as read. Division has been requested and the demand supported. Those in favor of the amendment will vote aye. Those opposed will vote no. The question, for the benefit of the late comers, is that portion of the amendment offered by Mr. Lawrence dealing with the appointment of justices of the supreme court and judges of the court of appeals. All those in favor of the amendment will vote aye; those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 25, the nays are 91.

CHAIRMAN VAN DUSEN: That portion of the amendment is not adopted. The question now is upon the second portion of the amendment offered by Messrs. Lawrence, Tubbs and Mrs. Judd, which you will find on page 4 of your pending amendments. The portion of the question is that dealing with the method of selection of judges of the circuit court and of the probate court in counties voting to adopt the system. On that question, do you seek recognition, Mr. Everett?

MR. DANHOF: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Is there anything before this committee which yields itself to the consideration of selection of circuit court judges? To my knowledge the only matter before us is the selection of supreme court judges. We have not yet reached that point.

CHAIRMAN VAN DUSEN: The amendment which was offered by Messrs. Lawrence, Tubbs and Mrs. Judd dealt with both the selection of justices of the supreme court and judges of the court of appeals, and with the permissive use of the same system for the selection of judges of the circuit court and the probate court. The question was, pursuant to the request of Mr. Everett, divided, and we therefore have before us at this time the second portion of the amendment offered by Mr. Lawrence and his associates.

MR. DANHOF: You would rule that it is germane, then, Mr. Chairman?

CHAIRMAN VAN DUSEN: In its original form it was clearly germane, and the Chair doesn't think the division of the question would suffice to rule the remaining portion out of order at this time, Mr. Danhof. Mr. Everett.

MR. EVERETT: Mr. Chairman, I asked to have this divided because it seems to me 2 separate, distinct questions were presented. On page 4, the last paragraph on that page, the second line of the paragraph reads thus:

> There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission.

The other section, of course, relates to the supreme court and the intermediate court of appeals. To my mind, if such a referendum were held in my county I would vote against it and oppose it, but I still think it ought to be in the constitution.

We have had a great deal of talk here about the people want this and the people don't want that, and all this says is that the people can get exactly what they do want by voting for it. I think it gives a degree of flexibility to the constitution which it should have. I think it gives to local governmental units the right to select for themselves how they will select their judges. I would hope that they wouldn't use it, but I don't think this convention should deprive them of the right to have it if they want to use it.

CHAIRMAN VAN DUSEN: The question is on this portion of the Lawrence amendment, which the secretary will read.

SECRETARY CHASE: The amendment has now been, by the division, revised so that it reads as follows:

1. Amend page 2, following line 24, by inserting section g, to read as follows:

"Sec. g. For all courts of record for which a judicial nominating commission is provided, a vacancy in the office of judge shall be filled by the governor from a list of 3 nominees presented to him by a judicial nominating commission. If the governor should fail to make an appointment from the list within 60 days from the day it is presented to him, the appoint-

ment shall be made by the chief justice or the acting chief justice from the same list.

At the next general election following the expiration of 3 years from the date of appointment, and every 10 years thereafter so long as he retains his office, every judge so appointed shall be subject to approval or rejection by the electorate. In the case of a judge of the circuit court or of the probate court the electorate of the county or circuit in which the court to which he was appointed is located shall vote on the question of approval or rejection.

There shall be a judicial nominating commission for each circuit court and each probate court, in each county or circuit which has by a referendum vote of the electors therein authorized the creation of such a judicial nominating commission. Each judicial nominating commission shall consist of 7 members, one of whom shall be the chief justice of the state, who shall act as chairman. The members of the bar of the state residing in the geographical area for which the court sits shall elect 3 of their number to serve as members of said commission, and the governor shall appoint 3 citizens, not admitted to practice law before the courts of the state, from among the residents of the geographical area for which the court sits. The terms of office and compensation for members of a judicial nominating commission shall be fixed by the legislature, provided that not more than 1/3 of a commission shall be elected in any 3 year period. No member of a judicial nominating commission shall hold any other public office or office in a political party or organization and he shall not be eligible for appointment to a state judicial office so long as he is a member of a judicial nominating commission and for a period of 5 years thereafter.".

CHAIRMAN VAN DUSEN: The question is on the amendment as read. Mr. Danhof.

MR. DANHOF: Point of order, Mr. Chairman. Before this committee at this time is a proposal pertaining to the supreme court, Committee Proposal 91. That is all that is before this committee at this time. That is all that we have been discussing. The circuit court is dealt with in Committee Proposal 93, A proposal pertaining to the circuit court. I therefore state that the matter for consideration at this time, Mr. Chairman, is out of order.

CHAIRMAN VAN DUSEN: Mr. Danhof, your point of order would be very well taken if the amendment had been offered separately. Because it was offered as a part of an amendment dealing with the supreme court and the court of appeals, the Chair will rule it is germane. However, the Chair might suggest that since its consideration might more appropriately be deferred until we are dealing with the circuit court and probate court, Mr. Lawrence might be willing to withdraw it. If Mr. Lawrence does not choose to withdraw it, however, the Chair will rule it is in order.

MR. DOWNS: Mr. Chairman, I have a motion to make if it is in order.

CHAIRMAN VAN DUSEN: State your motion, Mr. Downs.

MR. DOWNS: I move that consideration of this matter be postponed until Committee Proposal 93 is before the committee of the whole.

CHAIRMAN VAN DUSEN: Mr. Secretary, is the motion in order? The motion is in order. The question is on the motion of Mr. Downs that further consideration of the second half of the Lawrence amendment, the portion which was just read, be deferred until Committee Proposal 93 is before the committee of the whole.

MR. DOWNS: Mr. Chairman, the purpose for this, I think, is rather obvious. I think in discussing the circuit court and the probate court we should have the advantage of hearing the report of the committee and then discuss this at the more appropriate juncture.

CHAIRMAN VAN DUSEN: Any further discussion on the motion? Mr. Danhof?

MR. DANHOF: I think that is entirely proper.

CHAIRMAN VAN DUSEN: All in favor of the motion will say aye. Opposed, no.

The motion prevails. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee do now rise. Those in favor say aye. Those opposed, no.

The motion prevails, and the committee will now rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one section of one proposal, of which the secretary will give a more detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** has considered certain amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: The committee on style and drafting will meet in room K this evening at 8:00 o'clock. William B. Cudlip, chairman.

We have the following requests for leave: Mr. Norris wishes to be excused from tomorrow morning's session and Mr. Marshall wishes to be excused from the sessions of Thursday and Friday of this week as his wife is going into the hospital for surgery.

PRESIDENT NISBET: Without objection, the leaves are granted.

The Chair recognizes Mr. Hoxie.

MR. HOXIE: Mr. President, point of information. Relative to the time for reconsideration of a provision defeated in the committee of the whole, my question is, does the time start to run presently — and I am referring to the Prettie provision — or does the time start to run following the completion of the consideration of the entire proposal?

PRESIDENT NISBET: Mr. Chase, do you want to answer that question?

Mr. Hoxie, the opinion is that the motion for reconsideration must be made today or tomorrow. Mr. Leibrand.

MR. LEIBRAND: Mr. President, under what rule is that ruling you made?

PRESIDENT NISBET: Rule 53, Mr. Leibrand. The Chair recognizes Mr. Lundgren.

MR. LUNDGREN: Mr. President, I move that the Webster debating society adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor say aye, opposed, no.

We are adjourned until tomorrow morning at 9:30.

[Whereupon, at 5:15 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Wednesday, February 28, 1962.]

EIGHTY-NINTH DAY

Wednesday, February 28, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning will be given by the Reverend Fredrick Brownell of St. Paul's Episcopal Church, Jackson. Reverend Brownell happens to be the pastor of Berry Beaman's church. We are glad to have him here this morning.

REVEREND BROWNELL: Let us pray. Most gracious God, we humbly beseech Thee, as for the people of the state of Michigan in general, so especially for this constitutional convention in meeting assembled; that Thou wouldst be pleased to direct and prosper all their consultations, to the advancement of Thy glory, the good of Thy church, the safety, honor and welfare of all Thy people in the state of Michigan; that all things may be so ordered and settled by their endeavors, upon the best and surest foundations; that peace and happiness, truth and justice, religion and piety may be established among us for all generations. These and all other necessaries, for them, for us, and Thy whole church, we humbly beg in the name and mediation of Jesus Christ, our most blessed Lord and Savior. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. All present please vote aye. Have you all recorded your presence? If so, the secretary will take the roll.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Messrs. Heideman and Marshall; from today's session. Mrs. Davis called in; Mr. Davis has the flu and wishes to be excused indefinitely.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Mr. Davis, Miss Hart, Messrs. Heideman, Marshall, Mosier, Norris and Perras.

Absent without leave: None.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs. Norris and Perras. Mr. Balcer, having been excused for a portion of the day's session, reentered the chamber and took his seat.]

PRESIDENT NISBET: Report of standing committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Select committees.
SECRETARY CHASE: None.
PRESIDENT NISBET: Communications.
SECRETARY CHASE: No communications.
PRESIDENT NISBET: Second reading.
SECRETARY CHASE: Nothing on that calendar for today.
PRESIDENT NISBET: Motions and resolutions.
SECRETARY CHASE: No resolutions on file.
PRESIDENT NISBET: Unfinished business.
SECRETARY CHASE: None.
PRESIDENT NISBET: Special orders.
SECRETARY CHASE: None.
PRESIDENT NISBET: The Chair recognizes Mr. Leibrand.

MR. LEIBRAND: Mr. President, may I make a parliamentary inquiry?

PRESIDENT NISBET: You may.

MR. LEIBRAND: Yesterday afternoon in the committee of the whole there was under consideration section g of Committee Proposal 91 relating to the district plan for the selection of supreme court and appellate judges. The committee of the whole passed the Ford amendment which deleted section g. As I understood the ruling of the chairman of the committee of the whole, the action in passing the Ford amendment would preclude direct consideration in the committee of the whole of the district plan as contained in section g. What I inquire about at this time, Mr. President, is what effect that action of the committee of the whole will have on section g when Committee Proposal 91 reaches the whole convention. Will we still, then, be precluded from considering the merits of section g, the district plan?

PRESIDENT NISBET: Mr. Leibrand, when the committee of the whole rises, the question will be then on agreeing to the amendment as adopted by the committee of the whole yesterday.

MR. LEIBRAND: And if the convention agrees upon the Ford amendment, then the convention will be precluded from considering the merits of section g of the majority report; is that the ruling?

PRESIDENT NISBET: If the Ford amendment is voted down, then the judicial branch committee's report is the report of the committee of the whole.

Also, in addition to that, Mr. Hoxie asked for an interpretation yesterday on reconsidering. That is given further explanation on page 683 of today's journal.

MR. LEIBRAND: I saw that, Mr. President. But let's take the converse of that. Let us assume that the Ford amendment is approved by the convention. Then do I understand the ruling will be that this convention cannot consider section g of the majority report?

PRESIDENT NISBET: If the Ford amendment is approved by the convention as reported from the committee of the whole, then the only way the district plan could be presented again would be to have some revision of that plan offered as an amendment.

MR. LEIBRAND: It could not, then, be considered in its present form by the convention as a whole?

PRESIDENT NISBET: No, it could not, because it has already been defeated by the Ford amendment.

MR. LEIBRAND: Thank you, Mr. President.

PRESIDENT NISBET: **General orders.** The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of consideration of matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye, opposed, no.

The motion prevails.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee last sat, we were considering section g of **Committee Proposal 91.** The section as originally presented had been stricken, but there are amendments as substitutes for that section on the secretary's desk.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1325.

The next amendment in order of consideration would be the amendment found on page 6 of your list of pending amendments, offered by Mr. Lawrence. The Chair would ask Mr. Lawrence at this time, in view of the fact that most of the substance of the amendment found on page 6 was presented and rejected by the convention yesterday, does Mr. Lawrence desire at this time to insist upon offering his amendment?

MR. LAWRENCE: Mr. Chairman, I have consulted with

the 2 other sponsors, and it is agreeable to withdraw the 2 amendments, if there are 2 left.

CHAIRMAN VAN DUSEN: The Chair believes, Mr. Lawrence, there is only 1 left, and it will be withdrawn?

MR. LAWRENCE: Yes.

CHAIRMAN VAN DUSEN: Therefore, the secretary will read the next pending amendment to section g of Committee Proposal 91 if any there be.

SECRETARY CHASE: Mr. King offers the following amendment:

1. Amend page 2, following line 24, by inserting a new section g to read:

"Sec. g. There is hereby created a committee on judicial selection consisting of 6 members, 1 attorney and 1 layman appointed by the governor, 1 attorney and 1 layman appointed by the senate, and 1 attorney and 1 layman appointed by the house. The committee on judicial selection shall fill all vacancies on the supreme court which shall result in unexpired terms. At the expiration of such term, the appointee shall stand for reelection and shall be entitled to ballot designation as an incumbent. The secretary of state shall provide for a nonpartisan statewide primary election to determine 1 other candidate to run against the incumbent. When a full term vacancy occurs, the nominee of the committee on judicial selection may be opposed by the winner of a nonpartisan statewide primary. Any supreme court justice may nominate himself for reelection at the end of his term.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, at this time I would like to withdraw this amendment with the proviso that I can resubmit it at a later time.

CHAIRMAN VAN DUSEN: Mr. King's amendment is withdrawn. Are there further amendments to section g? Mr. Danhof, do you desire to be recognized on section g? Mr. Secretary, are there further amendments to section g?

SECRETARY CHASE: Mr. Kuhn has an amendment—

MR. KUHN: I am going to let that go to the body of the proposal. I am waiting for the other appointive measures to take their course, and then I will come in with this one.

CHAIRMAN VAN DUSEN: Mr. Kuhn's amendment is temporarily withdrawn. Is there anything further pertaining to section g? Mr. Danhof.

MR. DANHOF: Mr. Chairman, according to the list previously furnished, there was an amendment offered by Messrs. Yeager, Stamm and Everett. What has happened to that particular one which is on the list that I have?

CHAIRMAN VAN DUSEN: According to the list in the hands of the Chair, that is an amendment to section a, Mr. Danhof.

MR. DANHOF: Was that to section a? Is that correct?

CHAIRMAN VAN DUSEN: The amendment offered by Messrs. Yeager, Stamm and Everett amends section a, page 1, line 6, and so forth.

MR. DANHOF: In that case, Mr. Chairman, there being no further amendment, I would move that further consideration of Committee Proposal 91 be deferred, that it be passed subject to recall at the pleasure of the chairman, and further, that we delay consideration of Committee Proposal 92 and at this time pass to consideration of Committee Proposal 93.

CHAIRMAN VAN DUSEN: Mr. Danhof moves that the committee proceed to consideration of Committee Proposal 93. Mr. Brown, on that motion.

MR. G. E. BROWN: Mr. Chairman, I would not like to speak on this motion. If it is going to be passed without objection, I do not wish to speak.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire to speak on the motion?

MR. FORD: No, parliamentary inquiry. Is it my understanding that what we are doing is passing on from section g and we are not passing section g by?

CHAIRMAN VAN DUSEN: That is the purport of Mr. Danhof's motion as the Chair understands it, Mr. Ford.

MR. FORD: We will return to this at the status when the floor is open for amendments to section g?

CHAIRMAN VAN DUSEN: That is correct, Mr. Ford. Mr. Yeager, do you desire to be recognized on the motion of Mr. Danhof?

MR. YEAGER: Mr. Chairman, I would like to ask Mr. Danhof if he would have any serious objection if we considered the federal plan amendment under section a at this time.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: No, Mr. Chairman, I would be perfectly willing. If the sponsors of that wish to consider it at this time, I have no particular objection.

CHAIRMAN VAN DUSEN: Do you withdraw your motion, Mr. Danhof?

MR. DANHOF: In favor of Mr. Yeager's request, I do.

CHAIRMAN VAN DUSEN: Mr. Danhof's motion is withdrawn. Mr. Brown, for what purpose do you rise?

MR. G. E. BROWN: Parliamentary inquiry, Mr. Chairman. In the event there is an amendment which relates to both sections a and g as they appear in the committee proposal, but which may in prior constitutions relate only to one section, is it to be the ruling of the Chair that any portion that would have been covered by the subject matter of Committee Proposal 91, section g, would be out of order in consideration of Committee Proposal 91, section a?

CHAIRMAN VAN DUSEN: The Chair will not rule in advance on amendments which may be offered, Mr. Brown. The Chair would advise that if you have an amendment to section a which you would like to offer, the Chair would be glad to rule at that time, and that amendments, of course, will always be in order to the body of the proposal when consideration of the several sections have been completed.

MR. G. E. BROWN: Thank you, sir.

CHAIRMAN VAN DUSEN: The Chair will advise that, pursuant to the action previously taken in committee of the whole, consideration of section a had been postponed until completion of consideration of section g. Section g being temporarily passed, without objection, we will now proceed to section a.

SECRETARY CHASE: Messrs. Yeager, Stamm and Everett have offered the following amendment:

1. Amend page 1, line 6, after "justices" by striking out the comma and "to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.", and inserting a period and, "The governor shall, with the advice and consent of the senate, appoint the justices of the supreme court who shall hold office during their good behavior. Justices in office on the effective date of this constitution shall hold office for good behavior.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize Mr. Yeager.

MR. YEAGER: Mr. Chairman and ladies and gentlemen of the committee, I would like to make a short statement on this amendment and then yield the floor to Mr. Stamm for some further remarks. It seems to me that in writing this section we have 2 desirable goals. They are 1, that we provide a system which will provide the most capable individuals to serve in the highest court of the state; and 2, that we provide a system which will permit the decisions of this court to be influenced as little as possible by political considerations. Please note that I said, as little as possible.

This amendment which is before us now provides that when a vacancy occurs on the bench of the supreme court, that vacancy will be filled by appointment of the governor, subject to advice and consent of the senate, and such appointee shall hold office during his good behavior. "Good behavior" is the term used in the federal constitution and means, in effect, until impeachment. This section applies, incidentally, only to the selection of supreme court justices and not of any of the lesser court judges. As a layman, my concept of what a supreme court of the state — or of our nation, for that matter — should do is that it should make final statements on the interpreta-

tions on questions of law; to make such statements based on law, not other considerations. I believe this court should be as far removed as possible from political influence. I don't believe this can be done by using the elective process.

When a judge runs for office, on what platform should he run? I am going to make a fairer judgment than my opponent? Or I am going to act in a way to please my political supporters? Or, in essence, why should I be supported politically for this office?

Now the question comes up, if a judge is appointed for life does this take political considerations out of his decisions? I think much more so than any system which requires him to come up for election. If he is to come up and answer the question, how did I support my political position?, isn't it logical that the answer to that question may reflect itself in his work on the bench? I think this is a possibility. Even if it were not so, there might be some feeling among people that it might be so, and the confidence that people need to have in the highest court of this state is a strong consideration.

We talk about election of judges but we really don't mean election because we stick on the proposition of the ballot designation. What we are saying in effect is that we are to have elections, but we provide guidance in the form of the designation so that the voter will cast an enlightened vote and so he will know who the incumbent is and so, in effect, will trust the position of incumbency. To me this designation is a poor form of reappointment in the form of a gimmick.

One of the common statements I find in the mail coming to me here in the constitutional convention relating to the judiciary is that most voters feel that they have no way of knowing the qualifications of men running for judicial office to be able to make a good sound judgment. They have to rely on name identification and other things — and ballot designations.

We have had much discussion in the convention on the question of trusting the legislature. I think at this point we not only need to trust the legislature, but I think we should think in terms of trusting a governor. I honestly believe that any governor with this responsibility will choose highly competent people for this highest judicial post. You now have the appointive system without any advice or consent of anyone. Most judges are appointed by one man only, the governor, to fill vacancies. The appointive confirmation procedure has worked very well at the federal level. At the federal level we have had a vacancy occur on the average of every 8 or 9 years. This procedure also provides continuity and stability at this court level. Now, some have said these appointees, because they have no election, are not answerable to the people and therefore become unresponsive. I for one am not interested in having the members of this court politically responsive. I only want them to make judicial decisions on the basis of law and not political considerations.

In the interest of supreme court decisions as far removed as possible from politics, I urge that you vote yes on this amendment for the federal system for the selection of state supreme court justices in the state of Michigan.

I would like, Mr. Chairman, at this time to yield to Mr. Stamm.

CHAIRMAN VAN DUSEN: Mr. Yeager, would you yield first to Mr. Lawrence for a question?

MR. YEAGER: Yes.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Yeager, I wonder if any consideration was given to reducing the number of justices to 7 in view of the fact that it appears at this time that there will be an intermediate appellate court. Rather than increasing, I wonder if any consideration was given to decreasing the court by one?

MR. YEAGER: Well, speaking personally — I haven't talked to the other sponsors of the amendment — we, I am sure, would have no objections to decreasing the number. We accepted the number 9 because that was in the committee report as it came out, and for no other reason. Our amendment started after that figure was given in the report.

CHAIRMAN VAN DUSEN: Mr. Yeager now yields to Mr. Stamm.

MR. STAMM: It is with a certain amount of hesitancy that I want to talk on a thing that is as important as the supreme court. I, too, am a layman in this convention, but I think I have had the happy experience of having been associated with a section of our judicial system where I may sit as an observer and watch the barristers and the jurists as they tangle with the problems of law. I feel, too, that possibly our judicial committee was weighted too much in favor of the barristers and the jurists. I feel, too, that the people should have been entitled to some representation as the courts were being retooled and redesigned for all of Michigan, and I think it is unfortunate sometimes that we in our profession or in our business definitely have to represent that point of view because that is a thing that we know the most about. That is the thing that we work with.

Now, I feel that here in this particular system we have a system that has been tried and has been found to be a good operation. We find generally very little criticism with the operation of the federal system. In the federal system we do take attorneys usually from general law practice and assign them to our federal courts, and they know that once they have received the appointment to the court, they are free from outside political interference or influence. They are men who have been tried, and we have found very few situations where they have had to be removed from the bench. I think possibly our judicial committee in their study of this particular problem have been too much influenced by a contemporary situation which may not become a problem for the future. It seems to me that through this system we are providing a system that has been proven and should work within the state of Michigan.

In this convention we hear the old cliche of the people's choice. You and I who have been active in a political party know that when it comes to selection of candidates for the judicial system in our state, the people's choice is not considered as much as it is a matter of finding a candidate that is expedient and that possibly can win an election rather than someone who has the legal training and the legal mind that can fit into the position of a justice of our supreme court. I would like to feel that here we are going to represent the people who have entrusted us to work out a document in this convention that will provide a court in this state that will truly be a supreme court.

I did not come here with a prepared speech. I hastily scribbled some notes this morning because I didn't realize that we were going back to section a as soon as we were. But I do feel that our fear of political interference would be lessened if we realized that this court was going to be established through appointment by the governor with the approval of the legislature. I feel then that we would have a bench which would be made up of men who knew that they would have to have no fear of personal prejudices or influences in their decision. And there is one other thing I would like to leave with the committee: this fear of ours of party politics is no greater or no worse than the fear of bar politics.

I want to urge you to at least give some consideration to this proposition. It has worked for the United States of America, and I feel that there is no reason why it should not work for the great state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Yeager, do you desire at this time to yield to Mr. Everett?

MR. YEAGER: Mr. Everett may want to make some remarks later, but we yield the floor at this time.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, as I stated to you yesterday, the committee considered a plan of appointment such as this. Mr. Yeager appeared before our committee, having introduced a delegate proposal, and very eloquently and forcefully argued his point of view as he has today. The committee, after due consideration, as I advised you, overwhelmingly defeated any type of appointive plan, not only the ABA plan, but a plan such as is put forth at this time.

It was the considered opinion of the majority of the committee that the voters of this state are not willing at this time to give away their right to choose the justices of the supreme court, or at least to have a say in their selection or retention, and as a consequence this type of plan wherein they are appointed for a lifetime appointment was rejected by an overwhelming vote. I will not necessarily get into the numbers. There seems to be some conflict.

It is the opinion of the committee that the elective system and retention has served well the people of this state and that there is not the requirement nor the need that we switch to this type of system. I will agree with Mr. Yeager that this has worked in the federal system, but again the size of the country and the very operation of the system requires the appointment. Therefore, I will have to at this time respectfully oppose the amendment and would urge that it be defeated.

At this time, Mr. Chairman, Mr. Ford wishes to take the floor, and I will so yield.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman and members of the committee, I rise to oppose the proposed amendment. I assume that this wouldn't be the end of it. I am waiting for somebody to take the floor and put the real clincher into this one, and that would be to add advice and consent, and then we will get right around to the position where we have both of the other departments of government deciding who is going to be on the supreme court instead of the people.

One thing that we seem to lose sight of when we get bogged down in the detail of devising a foolproof system of picking insulated judges that are free from all sorts of pressure and responsibility is the fact that we have 3 independent branches of government, and no place is this more important than at the very top, at the supreme court level. It would be unfortunate if the governor, and conceivably the legislature — because I can't see this delegation sitting still for this one without throwing advice and consent into it before we get through — sitting still for any governor to put people on our bench for life, and that is what this is. Nobody has used it yet but this is a lifetime appointment.

Tony Stamm says that he hadn't heard of very many cases of federal judges being removed. Well, Tony, there is a great deal said about the number of cases where federal judges should be removed and aren't removed because to impeach a man is a pretty serious matter and a very difficult thing. What sometimes has happened in our federal system is that they just keep him out of the way, keep him where he can do the least amount of damage until he finally expires or retires. This is a system that has worked rather well in the federal system, but there are a lot of distinctions between their system and ours, and I don't think that the majority of lawyers who practice in both courts are going to agree with you that the judges, at the trial level, at least, in the federal system are superior to the trial judges that we get in Michigan by the elective process. As a matter of fact, there is some evidence to the contrary. I am not talking about individuals, but I am talking about straight across the board.

The real bad part about this from our point of view is that, as Sam Ostrow said yesterday, no one has devised a yardstick by which you can measure a person before he goes on the bench and tell what kind of a judge he is going to be. You can take a man who has had an otherwise perfect record. He may be an excellent trial lawyer. He may be a lousy judge at the same time. He may have been a very mediocre trial lawyer or no trial lawyer at all and turn out to be one of the best judges that went on the bench. So this doesn't work. He may be a very personable fellow, well thought of and a member of all the proper clubs and organizations and not be a good judge; and he may be a fellow that just doesn't seem to get along with anybody and he becomes a superior judge. The way you find out is to put him on the bench and then see what he does.

Now, unfortunately you can't impeach a man because he is a bad judge. You can only impeach him if he does something dishonest. However, you can at the ballot box remove a man from office without the indignity of impeachment, reject him by simply saying, "You are not the best. You are not the quality that we want. We want Joe Doaks because he seems to have what we want."

This system goes further away from the elective system than anything that has been proposed, and I think that it would strike at the very heart of an independent judiciary and remove from the Michigan court system one of the essentials that makes it a superior system in the United States.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Yeager, Stamm and Everett, the Chair will recognize Dr. Nord.

MR. NORD: Mr. Chairman, I would, first of all like to state that this plan offered by Mr. Yeager and others is by no means a terrible plan. It certainly has a great deal to be said in favor of it. And I might say further that when I came to the convention, this is the plan I favored. I am still not convinced that it is wrong in every respect, but I would like to analyze it into parts to see to what extent it does have some defects. Of course, as far as I know, it has worked very well in the federal system, but I speak only as a professor rather than as a man with a great deal of practical experience. I have been advised by attorneys that they think otherwise as to the inability to remove a judge.

In any event, there are 3 different parts, as I see it, to this proposition, and it seems to me that some of them are good and others are not as good and maybe others are bad, and it might be that these could be considered separately. For example, the governor shall appoint. In my opinion that is the least objectionable and the most advantageous part of this system. The governor, in fact, has been appointing judges in this state for quite a long time. I have no objection to the people who have been appointed. I think they have been good judges. As far as I know, most people feel the same. And one of the advantages of that system of the governor appointing is that the governor is elected by all the people, so the people indirectly have selected the judges, and these judges have been selected in a manner that is responsive to the will of the people at large, so that particular part of it doesn't disturb me, that the governor shall appoint. I think that whether the governor appoints or whether the judges are elected in the first place is not particularly crucial, and as a matter of fact, this might be the best way to get a judge on the bench.

The next part of it, however, is with the advice and consent of the senate, and to that I would say there is a very serious objection, extremely serious. It has worked well in the United States. There is no question about it. But we have a different experience in Michigan with advice and consent of the senate. It has worked very poorly in Michigan. It has been highly political, and we would have to expect the same thing here. We also have to consider the fact that the senate in this state has been malapportioned for quite a long time, and we have no assurance, at this time at least, that it will not be malapportioned in the future. On that basis there will be a veto by the senate, and if the senate does not represent the majority of the people, then we can see that the people who will be selected, because of the advice and consent, will be screened by a minority, and the people who will become judges will really not be responsive to the majority of the people as such. I therefore feel that, considering the nature of the senate and the experience with the senate, that feature is very inadvisable in Michigan.

As to the third feature, the retention of judges or the tenure of judges, that they shall remain in office forever, there is certainly no question in my mind that that makes them as independent as possible and, as I said yesterday, independence is a very important part of being a judge, in my opinion. But, as I also stated, that is not the only thing. There must be some way to get rid of a judge who, let's say, stops being human. He must be independent, but at the same time there must be some humility left in him. He must not get the feeling that he is in a postion of a monarch of some sort, and it seems to me all of the other plans are superior to this one on this point. In every other plan there is some way to get rid of a judge. I don't think it should be very easy to get rid of a judge,

and actually none of the other ways are very easy to get rid of a judge. They are all very hard in this respect, but you can do it, whereas with the present amendment there is no way, basically, except by impeachment, and it seems to me that does go too far.

Therefore, although I feel that the first part, the appointment by the governor, is not bad, in fact is good, I believe the other 2 parts are bad and, on balance, I think we should oppose the amendment.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Yeager and others, the Chair will recognize Mr. Woolfenden.

MR. WOOLFENDEN: Mr. Chairman and members of the committee, I welcome an opportunity to speak on this amendment and to vote on it. It is my first choice of a method of removing a judge from political considerations. I think it has worked very effectively in the federal system, and I believe that we have ample evidence as to the distinction between the federal system and any form of elective system which is available. That evidence is available to every delegate here and to every citizen of Michigan irrespective of whether he is a member of the bar or whether he is not.

As a lawyer of 31 years, active practice in Michigan in both the federal and the state courts, I will admit that it is not, at least in my experience and view, clearly demonstrable from the evidence available to us that you get a better man on the bench initially. I know outstanding jurists that have gone on the bench by unqualified gubernatorial appointment to fill a vacancy originally, who have gone on the bench in a nonpartisan primary and then a general nonpartisan election, and who had gone on the bench by the federal system. And I will readily admit that it is not provable that you can get a demonstrably superior judge through the federal system, but I think it is clearly demonstrable from the evidence available to every citizen in Michigan that once on the bench, the federal judge is completely divorced from all other considerations, political, social or other considerations which may tend to affect his ability to give his complete and undivided attention and abilities to the work of judging the causes that come before him.

That evidence to me is in part drawn from the fact that we have all observed within the last 6 months or year that 2 outstanding judges of our state courts — and I refer specifically to Wade McCree of the Wayne county circuit court and Talbot Smith of the Michigan supreme court — have accepted appointment to the federal bench. Certainly their actions speak much louder than any words of mine as to the distinction between the 2 systems, because those men having accepted federal appointment are now free to devote themselves unqualifiedly and in the dedicated way that they both work solely at the job of being judge. I think it is vitally important to the preservation of our American institutions that we have judges who are judges and who are only expected to be judges and not men who are attractive political personalities as well as judges. The 2 do not go hand in hand necessarily.

I specifically invite the attention of the outstanding advocates of civil rights to what I am going to say now. We have finished in this convention the adoption of a bill of civil rights which I think is monumental in the history of civil rights in the United States. It is one of the things, when we are finished, that I am going to be proudest of as having been a delegate to this convention and having written the civil rights provisions that we have written into this constitution. It is clearly evident to the delegates who sincerely believe in the preservation of our civil rights that south of the Mason Dixon line there is not a single judge who took office by election who has carried out the crystal clear mandate of the United States supreme court in the field of civil rights. It is not a matter of personal courage. If he did render a decision, as he is constitutionally obliged to do, carrying out the United States supreme court mandate in the civil rights field, he would not be a judge beyond the next election — if in fact he were not ridden out of town on a rail before the election. The only judges who have measured up to their oath to support the United States constitution — and I submit the only judges who could measure up to that oath — are appointed federal judges. And I invite every delegate here to read a recent book published in November under the title of Fifty-Eight Lonely Men. It is the story in detail, case by case, instance by instance, of the progress of the cause of civil rights in the south. And the 58 lonely men who furnish the title to the book are the 58 federal judges at the district court level and the circuit court of appeals level who, thank God, have had the judicial independence and the courage to carry forward the civil rights cause for the benefit of all Americans. I think that evidence clearly distinguishes the ability of a man once on the bench to be absolutely free to devote himself to carrying out the law of the land, and I earnestly invite your consideration of this fact in your vote upon this amendment.

CHAIRMAN VAN DUSEN: Mr. Martin has offered an amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Mr. Martin offers the following amendment to the amendment:

1. Amend the amendment, first sentence, after "office" by striking out the balance of the first sentence and inserting "for a period of 5 years and then and each 10 years thereafter shall run on their record and with an incumbency designation."; and in the second sentence, after "office" by striking out the balance of the second sentence and inserting "for the balance of their term and then and each 10 years thereafter shall run on their record and with an incumbency designation.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. On the Martin amendment the Chair will recognize Mr. Martin.

MR. MARTIN: Mr. Chairman, I offer these amendments because I think the principal objection in many people's minds to the federal system is the lifetime appointment. This is a recommendation to some people, but I think many people feel that, as far as the state courts are concerned, there should be an opportunity for the people to pass upon a judge's record at periodic intervals and for that reason the amendment strikes out the words "during good behavior" and provides that after a period of years from the date of appointment, the incumbent shall then run on his record, the question being shall he be approved or not, and he would carry an incumbency designation on the ballot. Now, the purpose of this is to give the people a look at the record. If it has been particularly bad, if the judge has done something which has been brought to the attention of the people and they really want to get rid of him, they can do it. Otherwise, with the incumbency designation, he would have a reasonable chance, perhaps a more than reasonable chance of being continued in office.

It seems to me that this method of appointment, subject to advice and consent of the senate, gives the people an opportunity to have the appointment procedure used, gives the people an opportunity also to look at the appointment through the eyes of part of the legislative body, which is a salutary check, and then gives the people a chance at a later date to pass upon the question of whether the judge has conducted himself in a proper judicial manner. I think the wording of both the Yeager amendment and of the amendment to the amendment are self explanatory and I have no further comment to make on it. But this is the federal system with a modification which would give the people an opportunity to look at the matter from time to time thereafter.

CHAIRMAN VAN DUSEN: On the Martin amendment, the Chair recognizes Mr. Faxon.

MR. FAXON: Mr. Chairman, I would like to ask Mr. Martin a question through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. FAXON: Mr. Martin, on this question of after 10 years when the person comes up for rejection or approval, does this remove from consideration the placement of other names with regard to the office, or is this simply a rejection or approval, or is there still some opening for people to be nominated and still run?

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: If I understand the question, this would

not give an opportunity for additional nominations, no. This would be the judge running on his record. He would not be running against opponents. Now, I personally think that is the best way to do it, but I would certainly be agreeable, if the committee so felt, to see the possibility of his running against opponents. But in that case, of course, I would want to see him run with an incumbency designation.

MR. FAXON: You said both having an incumbency designation and then running on his record, and when you said "incumbency designation" I thought you meant that there might be another person running but I see not.

MR. MARTIN: Not as it is now drafted, no.

MR. FAXON: I just want to state for my own record that I oppose a person running simply against his name. I think that our tradition has been one where there has been some degree of competition in office, and the only place where I know that this is done in any widespread area is in elections conducted in the soviet union where a person runs and there is either a rejection or approval and you can't lose because there always seems to be more approvals. I would very much like to see our consideration of having people running against other people and not simply a rejection or approval.

CHAIRMAN VAN DUSEN: On the amendment offered by Mr. Martin, the Chair will recognize Mr. Farnsworth.

MR. FARNSWORTH: Mr. Chairman, members of the committee, I would speak in favor of the Martin amendment. I believe this will get the amendment before us in the form that many of us can vote for. It seems to me that now we are throwing some safeguards around the selection of justices of the supreme court that are desirable, the first one being that it will be reviewed by the senate because it is with the consent of that body. Secondly, you get a crack at them at the end of 5 years. If they haven't proven out, certainly there is an opportunity for the people to turn down that man, which I assume would make a vacancy and you could go through the same process again. If it develops at the end of 10 years that you want to turn this man down, the voters are at liberty to do so. I am very much in favor of adopting the Martin amendment to this amendment.

CHAIRMAN VAN DUSEN: On the Martin amendment, the Chair will recognize the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and members of the committee, there is no doubt in my mind but that the motives and aims of Delegate Martin in offering this amendment are most lofty. However, in my considered opinion, the people of the state of Michigan are opposed, and violently opposed, to any system providing for the appointment of their judges. They want to vote for them. For that reason I would vote against the Martin amendment and any appointive plan, and I urge my fellow delegates to do likewise.

CHAIRMAN VAN DUSEN: Speaking on the Martin amendment, the Chair will recognize Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, I have been practicing law for 33 years and have been in most of the counties of this state and many other states. I am not for any soviet plan of electing judges. That is what we have here. I am surprised that such an amendment has been offered. I concur with the views of Delegate Ford on this and the other amendment which is before this committee. A judge has to have much more than legal ability; he has to be a human being. He has to be able to get along with people. He has to love people. He has to have a very humane attitude at all times.

I have observed the appointive system in many countries of Spanish speaking origin, and the arrogance that is evident in those courts and the consideration that I have seen given people has been so repugnant to me that I never could vote for an appointive system. We are in a country where the government is supposed to be by and for the people and we should go forward by giving the people greater power in electing those that judge them rather than to go backward by using the appointment system. I am against both amendments and ask that they be defeated.

CHAIRMAN VAN DUSEN: On the Martin amendment, Mr. Madar.

MR. MADAR: Mr. Chairman, fellow delegates, as I said the day before yesterday, I occasionally agree with Mr. Farnsworth. I noted that yesterday he got up and talked about the g's. I hope that, as I told him yesterday, he wouldn't go off into orbit again, and I noted that he did again today.

I certainly am opposed — though my voice may not show it, I am vehemently opposed — to such a thing as appointments of judges except in cases of vacancies or emergencies, if you so wish. I believe the people ought to elect their own judges. I don't want the same thing to happen here that happens in Europe, not just in communism, as Mr. McAllister states it, but in conservative England where they create classes in society. That is the one thing we certainly don't want. We are a democracy here. I hope we keep it that way. And I hope that the delegates here before we leave, whether it be March 31 or July 31, will take the incumbent designation away from any office unless we have a similarity of names. Outside of that, incumbency designations don't belong. The system smells.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. Mr. Danhof.

MR. DANHOF: Mr. Chairman, on behalf of the committee, I would again state that we considered this variation of the plan, many variations. It was the considered opinion of the majority of the committee that, at least as the plan stands now, the idea of running against a nonexistant opponent was not desirable. Consequently the majority of the committee rejected both the original amendment and the amendment thereto. I would urge the defeat thereof.

CHAIRMAN VAN DUSEN: Mr. Ford, do you desire recognition on the Martin amendment?

MR. FORD: Yes. I wish to oppose the Martin amendment. It doesn't do anything to cure the problems that we have talked about for 2 days here. It merely attempts to put a very thin gloss of varnish over something that is a rose by any other name. I also oppose the principal amendment itself.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin to the amendment offered by Messrs. Yeager, Stamm and Everett. The secretary will read the amendment.

SECRETARY CHASE: Mr. Martin's amendment is:

[The amendment to the amendment was again read by the secretary. For text, see above, page 1347.]

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: I would ask for a division, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division on the Martin amendment. Is the request supported? It is supported.

Mrs. Judd.

MRS. JUDD: Just speaking on the Martin amendment, 2 points: I think we are talking as though we were trying to institute a new kind of plan when talking about appointment by the governor. I think we forget that we already have actually an appointive plan, as was indicated yesterday; that probably a majority of our judges are appointed by the governor, but without any restriction, and this is simply an effort to face up realistically to this fact and to improve the method of appointment.

Secondly, I would like to ask Delegate McAllister if he would be willing in his previous speech to substitute for his words Spain and soviet the words federal government, because this is not a Spanish or a soviet plan. This was the plan instituted in 1787 in America, and I think we can hardly think of George Washington as being a communist.

CHAIRMAN VAN DUSEN: Mr. McAllister

MR. McALLISTER: This plan is a little different, I think, than your federal plan. I don't think the people of Michigan want it. I do say that we do have a federal court appointment

plan. It has been in effect, and very definitely the reason for that is that it would be impossible or almost prohibitive for any individual to run for a federal job in a state the size of Michigan. The cost would be too great. And I think that is the reason that it is based on. But as for this plan in the state of Michigan, I don't change my mind a great deal.

CHAIRMAN VAN DUSEN: Mr. Faxon, do you desire further recognition on the Martin amendment?

MR. FAXON: Just a comment to the previous speaker — not Mr. McAllister, but the lady from Grand Rapids. I believe you will notice that in the 1787 constitution the people who wrote that document had not at all envisioned the kind of courts and federal court system that later developed, and as a matter of fact the language in the 1787 document is quite clear as not having any such powers as the courts later claimed they did have.

I think that the record of constitutional history in our country reveals that there was no such intent on the part of the framers to give to the courts the power of judicial review or reviewing the actions of the legislatures in the respective states, and that the question didn't really come around to the point where we think of the courts today until after the civil war period.

I would, furthermore, like to point out that much analogy is made here. Reference has been made to appointment and to the English system. I think in this regard we have a system of checks and balances of supposedly separate branches. In the English system it is all supposedly in one area. The ultimate court of high appeal in England, of course, is the house of lords which is supposed to be representative of the nation. We don't have an appeal from our supreme court to the legislature as you might find in the English system. I think that our safeguard in this country, at least in our state, has been through some form of election by the people, and this has proved fairly effective in the states. I think that one could justifiably argue that at times the federal bench has not been responsive because of its appointive features and good behavior, and that in many periods of history following the civil war, the federal courts acted in a way to deter or prevent states from effectuating their functions and carrying out their responsibilities through their declaring of state acts unconstitutional.

CHAIRMAN VAN DUSEN: The question is on the Martin amendment to the amendment offered by Messrs. Yeager, Stamm and Everett. Is there any delegate who would desire to have the amendment read again?

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division has been called for. Is there support? Sufficient number up. Those in favor of the amendment — Mr. Ostrow, the Chair had understood that you desired recognition on the main question. Mr. Ostrow seeks recognition on the Martin amendment.

MR. OSTROW: I oppose the amendment and the amendment which it amends. Everyone is speaking about removing judges from political pressures. I asked you yesterday to look at the Michigan Supreme Court Reports and try to see how many cases you could possibly find that had any political implications or where there could possibly be any political pressures.

Now, how either this or the federal system divorces a man from political pressures I don't know. I want to remind you of a judge who was in the papers for quite some time. His name is Feikens. Two attorneys general, 2 presidents of the United States wanted him to continue to be a judge; 1 senator said no. Now, in spite of anything you say, a federal judge is appointed for political reasons. It is a matter of senatorial patronage. They call it senatorial privilege or courtesy. You cannot be appointed to a federal district court without the blessing of your senator. Now you are going to remove a judge from politics by having him appointed by the governor. How do you get an appointment from the governor?

CHAIRMAN VAN DUSEN: Mr. Ostrow, the Chair will request that you confine your remarks, if you would, at this time to the Martin amendment.

MR. OSTROW: The Martin amendment is part of that, because first he is appointed and second he runs.

CHAIRMAN VAN DUSEN: The only question currently before the committee is the Martin amendment dealing with the election subsequent to appointment.

MR. OSTROW: All right. Here is this man whom you have divorced from politics. He has to run. He has to be elected. Now, how does he get elected? He has to go to the voters just the way the judges do now. He has to campaign. He has to have campaign funds. He has to have campaign workers. I submit that a judge will be a good judge whether he is elected under the present system or has to run under Mr. Martin's system. Take a look at the judges that we have had in Michigan. I practiced law for 37 years legally. For 3 years before that it was our practice while going to law school to try justice court cases. I wouldn't admit it until I was admitted. (laughter) Take our Michigan judges and take our Michigan federal judges; our state judges compare favorably with any federal judge we ever had, with one exception, my favorite, my former boss, Raymond Starr. Of course, to my mind, nobody was as great as he was or is. But this system will no more remove a judge from politics than the present system will, and if a judge is going to be influenced, he will be influenced under either system.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Martin. A division has been ordered. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the Martin amendment, the yeas are 35; the nays are 90.

CHAIRMAN VAN DUSEN: The amendment is not adopted.

SECRETARY CHASE: Mrs. Judd offers the following amendment to the pending amendment:

1. Amend the amendment, first sentence, after "consent of the" by striking out "senate" and inserting "legislature in joint session"; so that the language will then read, "The governor shall, with the advice and consent of the legislature in joint session, appoint the justices of the supreme court . . . ."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd to the amendment offered by Messrs. Yeager, Stamm and Everett. On her amendment the Chair will recognize the lady from Grand Rapids, Mrs. Judd.

MRS. JUDD: Mr. Chairman, members of the committee, this is an effort at trying to find a consensus of the committee as a whole on the problem of selecting judges, and possibly this is somewhat more palatable to a good many members of this committee than simply advice and consent of the senate. Incidentally, it happens to be the proposal in the model state constitution in its present form. Therefore, it seemed to me worth a try.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd. Mr. Downs.

MR. DOWNS: Mr. Chairman, I am not yielding my opportunity to speak on the original amendment. I would just like to compliment Mrs. Judd. She is getting closer (laughter) but not quite close enough. I think if you read the model constitution —and I yield to her; I am sure she has read it more recently— when they talk about advice and consent of the legislature, it is a legislature based on the one man, one vote concept. I assume this is a preface to our discussion on the executive branch, so I will not belabor the point or be out of order, but say that I compliment the delegate from Grand Rapids on her progress, and I hope it continues so we can see eye to eye when we get to the heart of advice and consent. Thank you.

CHAIRMAN VAN DUSEN: On the amendment offered by Mrs. Judd, the Chair will recognize the gentleman from Bay City, Judge Leibrand.

MR. LEIBRAND: Well, Mr. Chairman and delegates, if the lady from Grand Rapids would amend her amendment to provide for the appointment of judges on the advice and consent of the people, I would support it. (laughter)

CHAIRMAN VAN DUSEN: On the Judd amendment, the Chair recognizes Mr. Everett.

MR. EVERETT: Mr. Chairman, I cannot speak for the other 2 gentlemen who joined with me in offering the original amendment, but for myself I certainly have no objection to this being a matter for the legislature to pass upon. What they are interested in is a review of the governor's appointment which does not exist under the present system, and this certainly would be, in my own mind at least, a very acceptable review. We have contemplated the fact that even if the governor and the senate, or in this case the legislature, were of the same party—and there are quite a few of us in this room who assume that this situation will come into existence—there still would be a minority group which would look very carefully at this man, and in the spotlight of public opinion would determine whether or not he had qualifications to sit upon the bench. As I say, individually I would accept this as an appropriate amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: It seems to me that this amendment does leave the advice and consent to the duly elected representatives of the people who should be informed and able to determine whether or not the appointment is proper and if the nominee has the proper qualifications, and for that reason I would support this amendment wholeheartedly.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mrs. Judd to strike out of the Yeager-Stamm-Everett amendment "senate" and insert "legislature in joint session." Those in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The question is now on the amendment offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize the gentleman from Detroit, Mr. Sterrett.

MR. STERRETT: Mr. Chairman and delegates, I have heard various arguments here today for and against the appointive system of supreme court justices and, unlike Dr. Nord, when I came up here I didn't have any particular plan in mind. I had an open mind. However, I feel that in inserting all of these various amendments to this amendment, we are doing nothing but trying to set up something that is in between, and in this situation I don't think we can be in between. I feel that we either have to go along with an appointive system the same as we have in our federal courts or definitely go the other way. The appointive system we have in our federal courts has been tried for years. It has been good for the United States, as has already been pointed out. I see no reason why this couldn't be good for the state of Michigan. I would like to point out to you that all but Justices Black and Kelly have been appointed by the governor of the state of Michigan at one time or another, all of our present justices.

Now, if we are not going to accept this plan — this plan is an attempt to make this a nonpartisan situation — then I think we should definitely go the other way and have a nomination by the party, a partisan election of the justices, and permit them to be elected through the party. But I would prefer to see this plan in force because I would like to keep it as much as possible on a nonpartisan basis. In this plan there is no reference to partisan or nonpartisan. We will never know in the future whether it will be a governor of one party or the other.

If we have reapportionment, the complexion of our senate and our legislature in general could change and we will definitely not have any idea in the future which party would be ruling this situation. Therefore, I feel that this would be the best for the people of the state of Michigan.

CHAIRMAN VAN DUSEN: Mr. Ostrow, do you now seek recognition on the main question? Mr. Ostrow passes. Judge Leibrand. Judge Leibrand passes. Mr. Martin, do you seek recognition on the main question? Mr. Martin passes. Mr. Downs, do you seek recognition on the main question?

MR. DOWNS: Yes. Mr. Chairman, fellow delegates, I hope that the oncoming cold will keep me shorter than usual. I would like to speak to one point that was raised by Delegate Woolfenden this morning, and I believe Delegate Farnsworth raised it yesterday in the memorandum attached to his recommendation for the so called Missouri plan. This was the point on the matter of civil rights — and I think I summarize them correctly — where they both pointed out that the 58 lonely federal judges in the deep south carried out the decisions of the United States supreme court where the elected state judges there did not necessarily do so. That statement on the surface is perfectly accurate. I only wish to point out that when those of us speak of elected judges, we mean elections in which all the citizens have a right to vote. My own feeling is that if there were elections in the deep south where every citizen had the right to vote, we would find that the state justices of those state courts would be just as vigilant if not more so in supporting the principles of the United States constitution. I did not bring that up, but since that question had been raised, I thought the answer should be made.

I do think that the question here is probably one of the most basic ones in our whole judicial system; that is, whether judges should be elected by the people or whether they should be appointed some way, whether it is the Missouri plan or some other form, for an indefinite period. And this one is one where it has been pointed out there can be and have been arguments on both sides of the question. My own feeling is that as far as state courts go, we do have judges with more compassion and more understanding when periodically they must go back to the people as the final judge. Now, this is often called politics. I assume the definition of "politics" is what the other fellow does. What we do is "statesmanship."

But judges aren't like other people. They are not IBM machines that have powers put around them. We talk about the federal system, and I think largely it has been pointed out it depends on which person was making the evaluation and which time in American history. We can go back to Thomas Jefferson's vigorous support of an elective system and opposition to an appointive system. I feel that history shows certainly in Michigan our elective system has worked. I am the first to concede that it is a combination with the appointive, with the governor having the appointive power, but the very fact that there is to be an election would, it seems to me, require either the party conventions currently making nominations or the governor making an appointment to keep in mind the ultimate wishes of the people. I therefore oppose the amendment that has been introduced. Thank you very much.

CHAIRMAN VAN DUSEN: The lady from Livonia, Mrs. Conklin.

MRS. CONKLIN: Not being an attorney, I hesitated to even get into the discussion of the supreme court or any other facet of our judicial system. I am even at the point where I have to write down my thoughts so I don't get up here and forget them. I am frank to admit that I have been torn one way and then another by all the discussions that we have had here the last 2 days. My only hope was that we could present to the people of this state a better plan than that which is now in effect. The real problem before us, if we are honest with ourselves, is how to free our supreme court justices from political pressures. You know and I know only too well that if a man is supported by a particular element of our society, he needs those votes if he is going to run for office again next time, and some of his decisions are going to be made with that thought in mind.

Judge Leibrand has said the people in the state are violently opposed to appointment of their judges. I would say that I have no indication of this from the people in my district. I honestly believe all that the people want on their bench is an uncontrolled, unbiased judge, not a politician with a vote-getting personality.

I would like to point out to the laymen, if there are any left in the room, that this amendment is offered by 2 laymen and one attorney, which fact alone, I think, warrants our consideration. I urge the support of the Stamm-Yeager-Everett amendment.

CHAIRMAN VAN DUSEN: Mr. Sterrett.

MR. STERRETT: Mr. Chairman, delegates, this is the last time I will speak on this; it's a promise. (laughter) We just heard Delegate Downs say that the election of the judges should be the right of the people. I just wonder if it is left to the people or to the party which can persuade them the most. I remember in the 1960 election these 2 supreme court

justices were supposed to be nonpartisan, but Souris' name was on the Democratic ticket at the polls and Breakey's name was on the Republican ticket at the polls.

There is a lot of pressure put on the voter. And I am sorry that Delegate Hart is not here today, because I recall that when we gave a talk in a group prior to the election to con con, I raised the question to this group, "How many can name just by last name your present supreme court judges?" Not one could. I asked another question, "How many can name one and give me his legal background and qualifications as a supreme court judge?" Not one could. Now, what I would like to ask you is, in the election of supreme court justices, are we really doing the people a favor? Are we giving them a right? I don't feel we are. I feel we would be doing them more justice by appointing the supreme court judges, as this amendment to the committee proposal provides. Therefore, I would like to support this and I hope that I will have all of your support.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I think everything has been said that could be said about the contrast between election and appointment, but Mrs. Conklin strikes a note of concern in me when she suggests that what the people really want from this constitutional convention is a better system than we have and then she goes on to add, a system with unbossed and uncontrolled judges. I think that is substantially her language. I hope that she doesn't really seriously mean for one moment that the people of this state are dissatisfied with their present judicial system or with the quality of our judiciary. This discussion about unbossed judges and politics with respect to judges would be proper, in my mind, in the convention in Alaska where they had no precedent to go by, or it would have been proper in a state like New Jersey where they had a terrible scandal in their courts and were primarily concerned during their constitutional convention with the reform of a bad system because of bad people in the system as well, but it certainly has no place in Michigan where we have a long history of a clean, unbossed, independent judiciary.

I want to say once more that throughout the United States they hold our system up as an example of a good system. This is one of the places where we can be proud and hold our head up above all of the other states. As recently as December of this last year, Fortune magazine, in an article which is a scathing criticism of the judiciary throughout the United States, held up Michigan as one of the 3 best states in the union as far as its judicial system is concerned; and this is not based on a guess, this is based on a long period of study of the actual history of the court and our court's freedom, all the way from the bottom of the system up through the supreme court, from anything remotely resembling a controlled or machine politics type judiciary. And this goes back, if you will, long before we were electing judges nonpartisan, because we have only been electing judges on a nonpartisan basis since 1939, some of them since 1937. And even when we had the judges directly in politics with direct partisan nomination and partisan election, we have no history that would substantiate any accusation that the system has produced a bossed judiciary. This has never happened in Michigan. We had absolutely no evidence upon which to predicate the assumption that it could happen in the future.

CHAIRMAN VAN DUSEN: Judge Dehnke.

MR. DEHNKE: Mr. Chairman and fellow delegates, I am prompted to make a few remarks at this point because of what was said by Mr. Downs and by Mr. Ostrow. We have heard it said here rather often this morning that the federal system of appointments has turned out to be in every respect satisfactory. I don't want my silence to be construed as an agreement with that statement. Do we have to be blind to the extent to which judicial appointments have become political wares the same as any other kind of appointment?

In conclusion I want to read you something, and I feel it necessary in self defense to ask that you do not rise to express resentment over this sentiment until I have told you who said it:

> To consider the judges as the ultimate arbiters of all constitutional questions is a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy.
>
> Our judges are as honest as other men and no more so. They have with others the same passions for party, for power and the privileges of their courts. The judiciary is the subtle core of sappers and miners constantly working underground to undermine the foundations of our confederated fabric.

He is talking about the federal judiciary.

> They are construing our constitution from a coordination of a general and special government to a general and supreme one alone. This will lay all things at their feet. We shall see if they are bold enough to take the daring strides that 5 lawyers have lately taken. If they do, then I will say that against this every man should raise his voice and more, should uplift his arm. Having found from experience that impeachment is an impracticable thing, a mere scarecrow, they consider themselves secure for life.

That was written in 1820 by Thomas Jefferson.

CHAIRMAN VAN DUSEN: The gentleman from Detroit, Mr. Binkowski.

MR. BINKOWSKI: Mr. Chairman, ladies and gentlemen of the committee, I think Judge Dehnke has expressed some of my thoughts certainly better than I could. However, I would like to go on record for the election of judges.

Basically, I feel that judges are a bit more human if they have to come back to the people every 6 or 8 years, and I think that perhaps some of the dreamers in this convention are out of step in thinking that either judges live in a vacuum or that their decisions are made in a vacuum. Judges are human; they have prejudices; they have likes; they have dislikes.

These people who are hollering about nonpartisanship — I really don't understand nonpartisanship and perhaps somebody can explain it to me off the floor of this convention. Every one of us to the convention was elected on a partisan ticket. I think if you go through the biographies of most of us, you will find that in most cases we have a rich history of political activity, and I think this is very good and this is very sound. I for one believe in a vigorous 2 party system and will speak more upon that at a different time.

If it is necessary, I would be very happy to have partisan election of judges. However, I wonder if, according to Mr. Sterrett's comment, he is kind of fearful of this and whether some of the people here fear that perhaps they don't have a chance. I don't know. But I certainly am against this amendment and for the election of our judges.

Also I would like to raise another point that perhaps has been lost in all of our discussions, and that is this old item of flexibility. I submit that under the present language we have the greatest amount of flexibility. I think this is one of the standards that any of the proponents of a new plan have to bear the burden of proof in showing to this convention where their plan has more flexibility in the language for the future.

I think that Mr. Barthwell and Mr. Garvin have brought out the fact that our present method of electing judges is all spelled out by legislation. It is not in the constitution. I raise the question, "Why do you have to have it in the constitution?"

CHAIRMAN VAN DUSEN: Dr. DeVries.

MR. DeVRIES: Mr. Chairman, members of the committee, I really don't know what the people want. I can't intuit these things. Basically, I guess I am a social scientist, so I like to measure what people's attitudes are. We did this in Kent county last year, and I can only generalize about Kent county and how some of the people there who were polled felt about the supreme court. When you ask them about the present system, 7 per cent of them tell you that they want to keep it, which indicates to me some apparent satisfaction. You ask them about a partisan-nonpartisan arrangement like we have now and you get a 7 per cent return. You ask them if they want an all partisan primary and general election; 20 per cent of the people favor this kind of system. You ask them

about an all nonpartisan arrangement; about 20 per cent. You ask them if they want the supreme court appointed; 54 per cent of the people in my county polled want an appointed supreme court. Now, for this and many other good reasons already cited, I support the amendment.

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, fellow delegates, I rise to oppose the amendment that is before us for consideration. We have heard considerable discussion this morning about the federal plan. You have heard statements from various delegates why they do not believe it is practical for a state to adopt such a system, with which I wholeheartedly agree. I have in my hand a list of the methods of selection of justices throughout this country. Under the plan as proposed, we find 4 states: Delaware, New Jersey, Puerto Rico and Hawaii. I ask you, is this an experiment that we are going to enter into? Why, through the 175 years that we have had our federal system, if it is good for states, haven't more states adopted this type of selection of our supreme court justices?

I think when you consider that, you must realize that this system has not been adopted by the states because they felt it was not good. And in looking at the 4 states that have adopted it — and I guess Alaska can be included because this is a report from the Book of the States for 1960-61 — I think you cannot help but realize that it has its fallacies and that it should not be adopted in Michigan as a basis of selection of our justices of the supreme court.

CHAIRMAN VAN DUSEN: The Chair will recognize the mover of the amendment, Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, we have had considerable discussion now at this point on this question of the federal system. I understand there are some other amendments up there a little different in character, and if possible I would like to see us take a vote at this time, and I request a division, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Yeager requests a division on the amendment. Those in favor of a division will rise. The demand is supported. The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. Does any delegate desire to have it read? A division has been ordered. Those who favor the Yeager-Stamm-Everett amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Yeager, Stamm and Everett, the yeas are 30; the nays are 95.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a?

SECRETARY CHASE: Messrs. Yeager, Stamm and Everett now offer the following amendment:

1. Amend page 1, line 6, after "justices" by changing the comma to a period and striking out the balance of the section and inserting "The governor shall, with the advice and consent of the legislature, appoint the justices of the supreme court who shall hold office for a term of 8 years. At the end of such 8 year term, such justices desiring to succeed themselves may nominate themselves for reelection. Other candidates may be nominated on a nonpartisan basis as provided by law. Justices in office on the effective date of this constitution shall hold office as if appointed on the date of their last election.".

CHAIRMAN VAN DUSEN: The question is on the amendment now offered by Messrs. Yeager, Stamm and Everett, on which the Chair will recognize Mr. Yeager.

MR. YEAGER: Mr. Chairman, ladies and gentlemen of the committee, this amendment is an attempt to answer the objections of those who favor election of judges and those who think appointment is the best initial means of selection in a combination plan. The plan allows the governor to make appointment subject to advice and consent of the total legislature for the initial 8 year term. This means in effect that we will not have an appointment by just one man as we now have, but that in effect, if it were the present lgeislature constituted, it would be 145 people — that is 144 legislators and 1 governor. After the initial 8 year period, each justice can run for reelection upon his own nomination, and there is a provision for having other people in the race. It provides for staggering of terms by confirming the balance of the elective term of the incumbents.

To those who are interested in a plan for election by zones, I would simply point out that we are making provision for an appellate court to be elected on the zone basis which is going to take a considerable amount of work off the present supreme court. I therefore urge the adoption of this amendment.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, I would like to second the remarks of Mr. Yeager and recall to your attention some of the material we covered yesterday, not all of it by any means, but some of it. Yesterday we tried to determine for ourselves whether there was a satisfactory elective system available for this constitution, and the majority of the members of this convention have indicated quite clearly that they cannot find an acceptable elective system. I am not going to rehash all of the pros or cons for those which have been offered, but a majority of this convention will not accept them. So we have to look elsewhere.

Mr. Yeager, Mr. Stamm and some 27 other people in this convention agreed that the federal system was the best. But 30 is not enough. We have to find a system which will do what all of us want to do, 2 things: first, provide a means of getting to the bench the best possible men; and second, providing a means which is going to command a majority support in this convention. It must accomplish both purposes, and nobody has yet suggested any elective plan which can do either.

Now, this system will certainly have a strong tendency to get to the bench the type of man who is not now reached. At the very outset of this debate today Mr. Yeager pointed out that we don't suggest that all politics will be eliminated by an appointive system. As a matter of fact, for myself, I am not so sure I would want to eliminate all politics if it were possible, and concededly it is not possible. But what we can do is attract to the bench by gubernatorial appointment men who are not now considered either because they are not now going to go to a partisan convention and seek support of that partisan convention, whatever their politics may be, or are overlooked simply because they don't have enough adherents within a patronage committee to suggest their names to the governor. And remember again that if the legislature must review these appointments, the governor is on notice that whoever he appoints is going to have to bear scrutiny. His appointment is going to be reviewed in public by legislators, yes, but also by the press and by the people, and he has to be able to defend that choice. The man is going to have to have stature. He is going to have to have experience and ability.

I am not suggesting that all of the men being appointed today don't qualify under these terms. Many of them, I am sure, would. But what we are getting away from is the uncontrolled appointment by a governor of anybody who suits the patronage committee of his party — and I am not particularly concerned which party, because to me the Supreme Court of the state of Michigan has to rise above patronage committees, and if it doesn't we as a group have failed in our task. I submit to you also, suggestions have been made here that the people want this kind of a system or they want some other kind of a system. I think we should keep it in mind that the people want leadership from this convention. They are not simply suggesting that we write in their prejudices or their beliefs; they are demanding of us that we as a group determine for ourselves what in our best judgment would provide the best framework for government that this state can have, and if we constantly are fearful that we will offend somebody, we might as well close up shop and go home because we cannot make improvement unless we do offend some people.

In the final analysis, though, the vast bulk of people are represented here by 144 of us, not by lobbyists, not by paid letters or telegrams, but by us, and, unless we assume our responsibilities right here and now, we will have failed them. I don't think there is any member of this committee who is ready now to admit failure.

This is a method which is a distinct improvement over the present system, which is an improvement over any elective system which has been suggested, and if it is acceptable to a majority of us, we can turn to it with pride and say we have done for the state of Michigan what we were sent here to do.

CHAIRMAN VAN DUSEN: On the amendment offered by Messrs. Yeager, Stamm and Everett, Mr. Young.

MR. YOUNG: Mr. Chairman, this committee has decisively rejected first the district plan, then the Missouri plan and more recently the federal plan. This plan which is now presented to us is an amalgamation of all 3 plans. And for all the very good reasons that have been presented here in opposition first to the district plan, then to the Missouri plan and finally to the federal plan, I oppose this amendment.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: Mr. Chairman, speaking on any proposal on the judiciary apparently is a very difficult problem because you can hardly ever find 2 or 3 people who do agree with you and you are bound to make enemies of your friends. But in any event, I would like to commend the sponsors of this amendment for continuing to work toward a suitable solution to the problem. I don't believe that they have quite made it, and I would like to suggest what I think is wrong with it and what I think is right with it and ask them whether they would consider making certain changes in it.

As to the appointment by the governor, as I said before, I have no objection to it. That is basically what happens now. I am in favor of that. As to the reelection system which they have provided now in which the candidate or the incumbent judge can nominate himself and run against other candidates, I believe that is a step in the right direction too. As a matter of compromise I think that combines the best features of both plans that we have had before us.

The objection I have to the plan as it now is submitted is that there is to be advise and consent of the legislature, and the objection is based on 2 things: one, that the legislature will not be properly apportioned. It will not be the will of the people. The governor will be the will of the people. The legislature will not. That being the case, I don't want the will of the people to be affected or diluted in any way. Further, I see no reason why the legislature should have anything to do with the selection of judges if we can avoid it. I believe Judge Leibrand was absolutely correct when he stated that the only people who should give advice and consent are the people themselves, the people at large, the people of the entire state. They should give advice and consent.

Now, the question is how can they do it? They can't do it 8 years later as is suggested here. I believe they could do it if it was a very short time afterwards. In other words, what I am suggesting to the sponsors of this amendment is that they strike the advice and consent of the legislature entirely and shorten the first term to, say 2 years so that the people could give their advice and consent after a brief period, but a period long enough so that they can have a basis for their judgment. Let them have a short term, say 2 years. Then let the people vote in exactly the way that was suggested by the sponsors of the amendment. If the judge is elected, then the next term would not be for 2 years but it would be possibly for 8 years or maybe 6 years. That could be worked out. But the point is I think that, as Judge Leibrand has indicated, if there is to be advice and consent at all on an appointive system, I believe most of us feel that the advice and consent must be by the people and only by the people, not by some other body such as the legislature. That could be done — at least I think it could — with a short first term.

As the amendment now stands, I am opposed to it. If the sponsors wish to make changes in the direction I have mentioned, possibly they could work out something I could favor.

CHAIRMAN VAN DUSEN: Miss Donnelly has offered an amendment to the amendment, which the secretary will read.

SECRETARY CHASE: Miss Donnelly's amendment to the amendment is as follows:

1. Amend the amendment after "a term of" by striking out "8" and inserting "2"; and after "end of such" by striking out "8" and inserting "2"; and after "law.", by inserting "The elected justice shall hold office for a term of 8 years."; so the language will then read:

> The governor shall, with the advice and consent of the legislature, appoint the justices of the supreme court who shall hold office for a term of 2 years. At the end of such 2 year term, such justices desiring to succeed themselves may nominate themselves for reelection. Other candidates may be nominated on a nonpartisan basis as provided by law. The elected justice shall hold office for a term of 8 years. Justices in office on the effective date of this constitution shall hold office as if appointed on the date of their last election.

CHAIRMAN VAN DUSEN: The Chair recognizes the lady from Highland Park, Miss Donnelly.

MISS DONNELLY: I think the purpose of this amendment is fairly clear. We are besieged with difficulties, as everybody knows, on how best to select our supreme court justices. I basically prefer nonpartisan statewide elections throughout, but I know that it is apparently financially an idealistic situation and would allow only the most wealthy to seek this because otherwise people must have financial support. This selection by the governor is not unknown. That is what we basically have now. They basically hold office until the next time for election. All this provision does, in my opinion, is limit the time they shall be there by taking it from an 8 year and putting it back to a 2 year term. Thus the governor has the check publicly on his appointment and would have to, as the other movers on this believe, go through a certain spotlight.

At the moment the governor appoints under the advice of those who are very, very close to this governor. The people of the state, I believe, have a right to act. At this moment they only act against an incumbent who the governor has appointed without much aid from the people. This provision would allow the legislature in joint session to act, but their provision would be for a 2 year term. The individual then would run. Then the people, after the 2 year term, would have had an opportunity to judge their performance in office. Instead of sealing them in for 8 years, which the main amendment does, this seals them in for only 2 years. Then they must run for election. They do run against someone, as the other amendment has. The only thing this amendment does is cut down the amount of time. These judges appointed by the governor and cleared by both houses hold this office for a 2 year term, and from then on they are out against the public like anybody else. They have the incumbency designation. They have had the 2 years. They have had the appointment screening process. They probably would never be defeated. But the people have a chance to move within this 2 year period, and the original appointment has been thoroughly screened. I therefore move the support of this amendment to the amendment and move the main amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly, would you yield to Mrs. Conklin for a question?

MISS DONNELLY: Yes.

CHAIRMAN VAN DUSEN: Mrs. Conklin.

MRS. CONKLIN: Miss Donnelly — Ann — I just want to ask a question. I know we haven't debated the executive article yet but it seems the general intent around here is that the governor should serve a 4 year term so that he has a better chance to present his plans and become better known, perhaps, to the public, and I just wondered in a 2 year period how many of the average citizens of the state are going to know anything more about their judge than they do at the beginning of the 2 year term, and why not make it 4 years? Is there any particular reason for picking 2 years?

MISS DONNELLY: The reason I picked 2 years is because I believe the term of office of 8 years for the supreme court justice is proper. Taking a 4 year, it is 50 per cent. This advice and consent and nomination by the governor then would run for the length of the term of the governor, but they are sealed in for a 4 year term. The people cannot act.

I put it on the basis of a 2 year term on the theory that you shouldn't hold them in for 50 per cent of the time. On this amendment they will have 25 per cent of their time there. The people, in my opinion, will have an opportunity to observe

how these individuals have conducted themselves. The fact that the governor is in for a 4 year term — let's assume he is and that provision passes — I do not believe there is necessarily any reason to make the supreme court go on a corollary. In other words, I go back to my first thought: this is 25 per cent of the time. I think 50 per cent of the time is too long for the people not to have a chance to act.

MRS. CONKLIN: I just feel they aren't related with the term of the governor. If you understand my question, I don't think they are related, except that you have felt that a 4 year term would allow the people to begin to know something about the person involved, and I just wonder what could a supreme court justice do that maybe wouldn't be something pretty terrible where he would hit the front page of the paper that the average citizen in a 2 year period would ever know anything about him, and it seems to me they ought to serve a little bit longer where something at least might come up before the public's attention.

MISS DONNELLY: Well, I see your point. I don't think it takes a 2 year term for the people to know what the governor is doing. I don't agree with your premise in the first instance. I think there are other good reasons for the governor to act for 4 years. Your basic premise, I think, is false to me as to why the governor should have a 4 year term. The people can know before that, in my opinion. I think he should have more time to get a job done, perhaps. But it still goes back to how long should these appointees be sealed in. They would be sealed in, under my amendment, for 2 years. This is ¼ of their term.

I could see the 4 year argument. I just believe that 50 per cent is maybe too long to seal them in. The people should have a right to act before that time if they wish to act. I would say that 99 per cent of the time the people will not act. The incumbent will not be defeated. But the incumbent has originally been thoroughly screened, we like to think, in a public spot. They have had the 2 years. They would run with the incumbency designation. They thus have a great deal of protection, but they are not sealed in. The people may do something else. Someone may oppose them. And this is just an attempt to give more control to the people over the present system than we basically have now. They don't have it now. There is no airing of the appointment now.

CHAIRMAN VAN DUSEN: The Chair will advise that he has 5 speakers seeking recognition on the Donnelly amendment, one speaker seeking recognition on the main question. Mr. Danhof.

MR. DANHOF: Mr. Chairman, in view of the hour and the number of speakers just stated, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor will say aye; opposed, contrary.

The motion prevails and the committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered several amendments thereto; has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there any announcements?

SECRETARY CHASE: I have the following announcements:

The committee on style and drafting will be meeting this evening at 8:00 o'clock in room K. William B. Cudlip, chairman.

The committee on judicial branch will meet in room B tomorrow, March 1, at 8:30 a.m. Robert J. Danhof, chairman.

Mr. Balcer has been ordered to report to the veterans hospital for a physical examination and wishes to be excused from the afternoon session.

PRESIDENT NISBET: Without objection he will be excused.

SECRETARY CHASE: Mr. DeVries says the committee on administration will not be meeting this noon.

PRESIDENT NISBET: The Chair recognizes Mr. Mahinske.

MR. MAHINSKE: Mr. President, I move that the convention stand in recess until 2:00 p.m. this afternoon.

PRESIDENT NISBET: The question is on the motion of Mr. Mahinske. All in favor say aye; opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:35 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will please say aye; opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order.

The question before the committee is the Donnelly amendment to the amendment offered by Messrs. Yeager, Stamm and Everett to **Committee Proposal 91.** For the benefit of our visitors, the committee of the whole is considering the matter of selecting justices of the supreme court of this state. On the Donnelly amendment, the Chair will recognize Miss Donnelly.

MISS DONNELLY: At this time I wish to withdraw that amendment.

CHAIRMAN VAN DUSEN: Miss Donnelly withdraws her amendment.

The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. On that amendment the Chair will recognize the gentleman from Saginaw, Mr. Shackleton. Excuse me. Mr. Yeager, did you seek recognition?

MR. YEAGER: I didn't know that you were going to call on another speaker, Mr. Chairman. I simply wanted to request a division if the vote was to be taken.

CHAIRMAN VAN DUSEN: Mr. Shackleton, if you could defer your point for just a moment, Mr. Yeager requests a division. Is the demand supported? It is supported. Mr. Shackleton, you may proceed.

MR. SHACKLETON: Mr. Chairman, members of the committee, we have heard a lot on this floor about discrimination. I have heard no good, sane, sound reason against discrimination. But that works 2 ways. One of the biggest minorities in the state is lawyers, and so long as there is a provision for incumbent after the name of a supreme court justice or a justice of the peace running, or any other officer, or the provision for self nomination, unless I can find someone that can give me a good, sane reason, I would be highly opposed to it. I don't see why they should have that advantage over a sheriff, a county clerk or a dog catcher if he is running for office. It certainly would be a distinct advantage.

Dr. DeVries pointed out this morning in his area no one knew who the justices were anyway. So they should not have that particular advantage, and I would be opposed to either one of those designations in any provision in the constitution until we can get a sane reason for it.

The reason they are on a pedestal, apparently, is because they themselves and the attorneys have placed them there, not the general public or the voting public.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Yeager, Stamm and Everett. Mr. Danhof, do you seek recognition?

MR. DANHOF: We would like to have it read before we vote on it.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The amendment offered is as follows:

[The amendment was again read by the secretary. For text, see above, page 1352.]

CHAIRMAN VAN DUSEN: The question is on the amendment as so read. A division has been ordered. Those in favor of the amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 32; the nays are 89.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91?

SECRETARY CHASE: Mr. Kuhn offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn, on which the Chair will recognize Mr. Kuhn.

MR. IVERSON: Mr. Chairman.

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise?

MR. IVERSON: I move at this time to pass further consideration of Committee Proposal 91 at least temporarily if not beyond the consideration of the balance of the judicial article.

CHAIRMAN VAN DUSEN: Mr. Iverson moves to pass further consideration of Committee Proposal 91 until the remaining proposals of the judicial article have been considered by the committee of the whole. Mr. Ford.

MR. FORD: Mr. Chairman, I can't say that it is easy to form an opinion as to just what this will accomplish. I understand that there is considerable confusion among the delegates about just why this would be put over. There certainly is in this corner. However, if we are going to pass this, then we will have to pass the next proposal too, and if he wants to pass the proposals on both the supreme court and the intermediate court of appeals, we would have no objection.

CHAIRMAN VAN DUSEN: Mr. Iverson?

MR. IVERSON: Yes, I will agree to that.

CHAIRMAN VAN DUSEN: Mr. Iverson's motion is amended so that he now moves the further consideration of Committee Proposals 91 and 92 be deferred until following consideration of the remaining proposals relating to the judicial article. Those in favor of Mr. Iverson's motion will say aye; opposed, no.

The motion prevails. The secretary will read Committee Proposal 93.

SECRETARY CHASE: Item 4 on the calendar, from the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 93,** A proposal pertaining to the circuit court. A substitute for sections 8, 9, 10 and 11 of article VII.

Following is Committee Proposal 93 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE STATE SHALL BE DIVIDED INTO JUDICIAL CIRCUITS ALONG COUNTY LINES IN EACH OF WHICH THERE SHALL BE ELECTED ONE, OR WHEN PROVIDED BY LAW, MORE THAN ONE CIRCUIT JUDGE. A CIRCUIT COURT SHALL BE HELD AT LEAST 4 TIMES IN EACH YEAR IN EVERY COUNTY ORGANIZED FOR JUDICIAL PURPOSES. EACH CIRCUIT JUDGE SHALL HOLD COURT IN THE COUNTY OR COUNTIES WITHIN THE CIRCUIT IN WHICH HE IS ELECTED, AND IN OTHER CIRCUITS AS MAY BE PROVIDED BY SUPREME COURT RULE OR BY LAW. THE NUMBER OF JUDGES MAY BE CHANGED AND CIRCUITS MAY BE CREATED, ALTERED AND DISCONTINUED BY LAW AND THE NUMBER OF JUDGES SHALL BE CHANGED AND CIRCUITS SHALL BE CREATED, ALTERED AND DISCONTINUED ON RECOMMENDATION OF THE SUPREME COURT TO REFLECT CHANGES IN THE JUDICIAL BUSINESS. NO CHANGE IN THE NUMBER OF JUDGES NOR ALTERATION OR DISCONTINUANCE OF A CIRCUIT SHALL HAVE THE EFFECT OF REMOVING A JUDGE FROM OFFICE DURING HIS TERM.

Sec. b. CIRCUIT JUDGES SHALL BE NOMINATED AND ELECTED AT NONPARTISAN ELECTIONS AS PROVIDED BY LAW. THE TERM OF CIRCUIT JUDGES SHALL BE 6 YEARS. IN CIRCUITS HAVING MORE THAN ONE JUDGE THE TERMS OF OFFICE SHALL BE ARRANGED TO PROVIDE THAT THEY WILL EXPIRE ON A STAGGERED BASIS.

Sec. c. CIRCUIT COURTS SHALL HAVE: ORIGINAL JURISDICTION IN ALL MATTERS NOT PROHIBITED BY LAW; APPELLATE JURISDICTION FROM ALL INFERIOR COURTS AND TRIBUNALS AS PRESCRIBED BY SUPREME COURT RULE: TO ISSUE, HEAR, AND DETERMINE PREROGATIVE AND REMEDIAL WRITS; SUPERVISORY AND GENERAL CONTROL OVER INFERIOR COURTS AND TRIBUNALS WITHIN THEIR RESPECTIVE JURISDICTIONS, IN ACCORDANCE WITH SUPREME COURT RULES; AND JURISDICTION OF OTHER CASES AND MATTERS AS THE SUPREME COURT SHALL BY RULE PRESCRIBE.

Sec. d. THE CLERK OF EACH COUNTY ORGANIZED FOR JUDICIAL PURPOSES SHALL BE CLERK OF THE CIRCUIT COURT FOR SUCH COUNTY. THE JUDGES OF THE CIRCUIT COURTS MAY FILL ANY VACANCY IN THE OFFICE OF COUNTY CLERK OR PROSECUTING ATTORNEY WITHIN THEIR RESPECTIVE JURISDICTIONS, BUT SHALL NOT EXERCISE ANY OTHER POWER OF APPOINTMENT TO PUBLIC OFFICE.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 93:

During the first 3 months of our committee work we had the testimony and advice of all the members of the supreme court, of circuit and probate judges, state bar officers and lawyers and officers of local bar associations and members of the general public. The plan of operation of our circuit and probate courts, we found, met the approval generally of all persons and groups who appeared before us.

Sec. a. In order to keep the manpower in the circuit court system operating as efficiently as possible, the legislature may on recommendation of the supreme court increase or decrease the number of judges, create new circuits and alter or discontinue existing circuits. By this means the courts can better keep abreast of changing population and economic conditions and thus serve all sections of the state more efficiently.

Sec. b. Circuit judges are to be nominated and elected as at the present time at nonpartisan elections and for the same term as now, for 6 years. Where a circuit has more than one judge the legislature shall arrange a plan whereby the offices will expire on a staggered basis. In some circuits at this time, and others that may increase in size, it was thought that it would be better for the

MR. STEVENS: Mr. Wanger, I assume that you anticipate that style and drafting would change that language?

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: I beg your pardon?

MR. STEVENS: I anticipate that you intend that the committee on style and drafting would change that language after the constitution is completed?

MR. WANGER: Yes, indeed. It is contemplated that the words "committee proposal" and the section of the committee proposal are merely for identification purposes for the committee on style and drafting.

MR. STEVENS: I assumed that's what you meant. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. Wanger. Those in favor of the amendment will say aye. Those opposed will say no. The Chair is in doubt. Those in favor of the amendment will vote aye. Those opposed will vote no. The question is on the amendment offered by Mr. Wanger to the amendment offered by Judge Pugsley and others to insert the words "and subject to the limitations contained in Committee Proposal 90 and section a of Committee Proposal 96" in the second line after the word "effective". Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment to the amendment offered by Mr. Wanger, the yeas are 59; the nays are 36.

CHAIRMAN VAN DUSEN: The amendment is adopted. The question is now on the amendment offered by Judge Pugsley and others, as amended. Does any delegate desire to have it read again? Mr. Ford.

MR. FORD: I wish to oppose the amendment and urge the delegates to vote no.

CHAIRMAN VAN DUSEN: Those in favor of the amendment, as amended, offered by Judge Pugsley and others will say aye. Those opposed will say no.

The amendment is adopted.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those in favor of the amendment, as amended, offered by Judge Pugsley and others will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Judge Pugsley and others, as amended, the yeas are 74; the nays are 31.

CHAIRMAN VAN DUSEN: The amendment is adopted. Are there further amendments to the body of Committee Proposal 96?

SECRETARY CHASE: The pending amendment that is remaining is the amendment offered by Mr. Danhof, on behalf of the committee of judicial branch, to amend the body of the proposal following line 1 on page 4, by inserting a new section 1, which has been read and to which Mr. Ford has offered 2 amendments.

CHAIRMAN VAN DUSEN: Under the action previously taken by the committee, consideration of that amendment and the amendment thereto has been deferred until the committee of the whole has completed its consideration of Committee Proposals 91 and 92 and therefore, pursuant to that action and the prior action of the committee of the whole, we will now return to Committee Proposal 91. Mr. Higgs.

MR. HIGGS: Before returning to Committee Proposal 91 and before Committee Proposal 96 as a whole is adopted, I didn't hear you say —

CHAIRMAN VAN DUSEN: It will not be passed, Mr. Higgs, until we have completed consideration of the amendment offered by Mr. Danhof, on behalf of the committee on judicial branch, and the amendments thereto offered by Mr. Ford.

MR. HIGGS: I presume then that it would be not in order to make any statement with regard to any other section of this?

CHAIRMAN VAN DUSEN: It would be in order at this time, Mr. Higgs, if you desire to do so.

MR. HIGGS: With regard to section e, there was previously a question asked and an answer given with regard to whether or not the incumbents' designations were to apply to justices or judges solely in courts of record. Now, I am not certain what the application of this was previously in the constitution, but at the time of the committee action it was my understanding that this applied to all justices and judges. In other words, I would like to object to the interpretation placed upon that section with regard to the question and answer between Delegates Hutchinson and Cudlip. I raise that at this point because if it is the intention to so restrict it, the action should be taken by the committee of the whole because I do not believe that that was the action of the judiciary committee.

CHAIRMAN VAN DUSEN: If there is nothing further at this time with respect to Committee Proposal 96, the committee will return to consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court. Every section of that proposal has previously been passed except sections a and g.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1354.

Are there amendments to section a?

SECRETARY CHASE: Mr. Kuhn has filed with the secretary the following pending amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices. They shall be elected for 8 year terms, and not more than 3 justices shall go out of office at the same time.

Justices shall be nominated and elected at nonpartisan elections, conducted as provided by law. The legislature may provide for nomination and election by districts. Incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Kuhn, on which the Chair will recognize Mr. Kuhn.

MR. KUHN: Mr. Chairman and members of the committee, to me this seems like a compromise on what the committee reported out. As we all are aware, the committee reported out that we have a district plan for the supreme court. Some people are not of the opinion that a district court is necessary and yet, I think most of us believe that we should have a nonpartisan supreme court. This would allow us to have a nonpartisan supreme court. It would also allow us that if it could not be worked on a statewide basis to the satisfaction of our legislature, that they would have the power spelled out to set up districts. In other words, this is very flexible. It seems every time we have a problem we leave it up to the legislature. As far as the last sentence goes, this has already been taken care of in another provision and there is no need to have it here. I would therefore suggest that that could be deleted where it says incumbent justices may secure their nomination by filing an affidavit of intention to run as shall be provided by law.

CHAIRMAN VAN DUSEN: Mr. Kuhn, the Chair would remind you that no action has been taken upon the amendment dealing with that subject offered earlier this morning by Mr. Danhof.

MR. KUHN: I see. That is true. It was passed over for the time being. But I think we are all in agreement that the intention is, as Don Lawrence said, you are nominated now when you get your petitions filled out. I don't think anybody wants to bypass the primary election with this type of a provision.

Actually, if you look at the results of the state bar, I think you'll find that the lawyers preferred a nonpartisan election for our supreme court justices. They also preferred that they be nominated on a statewide basis, 2,852. Therefore, I think that it is quite evident that this would be their choice. I

know there is an argument that it is too costly. I can only remind you that it would be too costly to run for governor and therefore we only have the governor for the rich. It's a question that must be decided. I personally am one that thinks that we should do away with politics in our supreme court. I ran on the proposition that it was a fraud to nominate them at a convention and run them as a nonpartisan. I don't think the people like it. I think they want this corrected. This way we could correct it.

There is also the provision that they could automatically renominate themselves in another section. I am in complete agreement with this. To me, this would clean up our supreme court. We would not have to worry, as some say, who the DAC was or solidarity house, to use the both extremes. Therefore, I offer this as a compromise.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND; Mr. Chairman and delegates, there are many good things about Delegate Kuhn's proposed amendment with which I am in sympathy. However, there are 2 things that I question very strongly. The amendment says that the legislature may provide for nomination and election by districts. Now, we all know that for the second year the legislature has been attempting to create an additional congressional district and has been unable to come to an agreement. Now, if they can't agree on 1 congressional district, how is the legislature ever going to agree upon several judicial districts? The second thing that I am worried about is the cost of this statewide nonpartisan nomination and election. Estimates before our committee were that such a statewide run costs from $30,000 to $50,000. Here we have 2 statewide runs, one in the primary and one in the general election. Now, that is absolutely beyond the financial ability of the ordinary lawyer or judge. The only way that he can campaign twice on a statewide basis is to get the support of some pressure group, and that isn't the kind of judge or justice of the supreme court that we want. This situation of nonpartisan election is not comparable. Statewide nonpartisan election is not comparable with the cost of being elected governor because governors run on a party basis and have the financial backing and the manpower of the party behind him. Here are judges all alone and forlorn trying to put on 2 statewide campaigns in 1 year at a cost of $60,000 to $100,000. I feel that it is impractical. There are good things in Mr. Kuhn's proposed amendment but I feel for the reasons stated, I could not support it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn to section a of Committee Proposal 91. Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I'd like to ask Mr. Kuhn a question if he would care to respond. Remembering what Judge Leibrand said about the task of statewide nonpartisan campaigning, suppose that an amendment were offered to your amendment to strike out the words "at nonpartisan elections" and simply say that justices shall be nominated and elected as provided by law, leaving it then to the legislature and recognizing the absolute impracticality of a statewide nonpartisan nominating system, the legislature then in effect would have to decide whether our judges are going to be nominated and/or elected partisanly or whether they are going to set this state up into districts in order to insure a nonpartisan election. In that case, we would be leaving it to the legislature and recognizing that there would be these 2 alternatives. Because I think that we'll all agree that a nonpartisan statewide election is an impracticality, at least so far as nomination is concerned and I should like to have Mr. Kuhn's reaction to that suggestion. Would he support any such amendment or would he object to it?

CHAIRMAN VAN DUSEN: Mr. Kuhn.

MR. KUHN: As I understand it, Mr. Hutchinson, you would merely leave it to the legislature to decide the method of whether it should be a partisan election — on a statewide basis we are discussing now?

MR. HUTCHINSON: That is right, Mr. Kuhn. It would be left to the legislature whether it would be partisan or nonpartisan; recognizing, however, that from a practical standpoint that if it is going to be nonpartisan, the state would have to be divided into districts and that if they're not willing to divide it into districts, that there would have to be the continuation either of nomination at party conventions, as we have it now, and a nonpartisan election, as we have it now, or to go to a straight partisan system.

MR. KUHN: I wouldn't mind leaving it to the legislature if we took the one alternative out that you lastly stated, I believe: let them be nominated on a partisan basis and then run on a nonpartisan. I think this is the greatest evil. I will concede that I would allow them to make it straight partisan because then I think we're being honest with the people. I wouldn't fight that. And then if the legislature decided to make it nonpartisan, they could set up the districts. I'd be willing to go that far. I think those are 2 good alternatives but I would not want to get into the situation we are in today, on which we are being so justly criticized, as I see it.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, I would invite Mr. Kuhn's attention and the attention of the committee that as the present constitution now stands, the method of nomination of justices of the supreme court is now vested in the hands of the legislature and the legislature has been wrestling with this problem ever since it was handed to it for the very practical reason that a nonpartisan primary campaign statewide for the office is impractical. I don't know whether the idea, up until this convention met, ever was presented to the legislature about establishing the state in districts for the purpose of nomination, but I suppose that you can say that that wouldn't be very practical or if you're going to divide it into districts for nomination, it will have to be divided into districts for election as well.

I suggest that the fact that the legislature has not altered the system which we have so far as nomination is concerned — their problem is the same problem that has plagued this convention for the last 2 weeks. I think that a solution to the matter — we've demonstrated we haven't been able to solve it and obviously it's one that is going to take a lot of time. I think the only thing to do is to leave it to the legislature. I think your amendment would be in excellent shape, sir, if we struck out that reference here to nonpartisan elections. This would not prohibit nonpartisan elections, would not prohibit nonpartisan nominations, would not prohibit nonpartisan statewide nominations except that we know that those things are impractical.

MR. KUHN: Mr. Hutchinson, may I ask you one question? Would you agree with me that it's possible we could put a further limitation in to protect the people, and as you know and so many times have told this convention that we can only put limitations in for the legislature, that they could not provide a system where we have a partisan nomination and then run nonpartisan? In other words, it should be consistent, the method of nomination and the running for the election as far as their party goes. I'd be willing to go along with something like that.

CHAIRMAN VAN DUSEN: Mr. Hutchinson.

MR. HUTCHINSON: Mr. Chairman, as I understand, that would leave the legislature 2 alternatives — either district the state for nonpartisan purposes or provide for the partisan nomination and election of justices for all practical purposes.

MR. KUHN: I think that would be true and I don't see anything wrong with it. I think it would be a good solution.

MR. HUTCHINSON: I have no amendment prepared at the moment one way or the other. I just wanted to ask Mr. Kuhn to find out what reaction I'd get if I offered an amendment like I suggested in the first place.

CHAIRMAN VAN DUSEN: The Chair will ask that the committee be in a little better order. Judge Leibrand.

MR. LEIBRAND: Replying for a moment to Senator Hutchinson, the reason why I don't think it should be left to the legislature is the people don't want it left to the legislature. In 1939, by a vote of 376,000 to 241,000, they voted to take the

power, so far as the election process was concerned, away from the legislature, and I don't think they've changed their minds since 1939.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Kuhn to section a of Committee Proposal 91. Does any delegate desire to have the amendment read again? The secretary will read the amendment.

SECRETARY CHASE: The amendment is:

[The amendment was again read by the secretary. For text, see above, page 1564.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. The secretary will read the next amendment.

Mr. Higgs requests a division. Is the demand supported? It is not supported. Mr. Danhof.

MR. DANHOF: Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Danhof moves the committee do now rise. Those in favor of Mr. Danhof's motion will say aye. Those opposed will say no.

The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration several matters, of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state; has adopted one amendment to this proposal, has placed this proposal at the foot of the calendar of proposals from the committee on judicial branch and has taken up consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court; has considered an amendment thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Any announcements?

SECRETARY CHASE: Will the delegates please take note of this for your spouses. It is requested that you please inform your wives again of coming to the luncheon on next Tuesday at 12:15. There have been 55 reservations so far. Mrs. Tubbs would like to have other reservations as quickly as possible. You may make these reservations with her or with the president's secretary.

We have the following requests for leave: Mr. Baginski, Mr. Dehnke, Mr. Stopczynski, from the afternoon's session; Mr. Romney wishes to be excused from this afternoon's session to fill a speaking commitment to the Detroit adcraft club on the convention; Mr. Upton wishes to be excused from the Monday's session and the first part of next Tuesday's session, for a speaking engagement regarding the convention; and Mr. Heideman wishes to be excused from the sessions of next Monday and Tuesday.

PRESIDENT NISBET: Without objection, they are excused. Anything else?

SECRETARY CHASE: Those are all the items on the desk at the moment, Mr. President.

PRESIDENT NISBET: The Chair recognizes Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, apparently the message didn't get in yet. I also make a request to be absent from Monday's session and the morning session on Tuesday in order to fulfill a speaking engagement.

PRESIDENT NISBET: Without objection, it is granted. Mr. Pugsley.

MR. PUGSLEY: Mr. President, I move that we recess until 2:00 o'clock.

PRESIDENT NISBET: The question is on the motion of Mr. Pugsley. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and at 2:00 o'clock p.m., reconvened.]

The convention will come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, recognizing that the secretary might have some announcements to make, I would like to state that immediately after the noon recess, at the rostrum at a meeting between Mr. Downs, President Nisbet and myself—let me start a little bit beyond that. Just before we recessed this noon, Mr. Downs came over and mentioned the condition of the roads and the weather forecasts and the fact that this was Friday and that everybody was getting weary and that the matter of how the supreme court was to be selected is the matter before us and it very obviously would not be concluded this afternoon anyway, and suggested the advisability of adjourning rather than recessing for an afternoon session. In the meantime the convention did recess. So as I say, we went up to the president's desk and as a result of the conference we agreed that recognizing all of these things, that as soon as the convention met at 2:00 o'clock we would adjourn.

Based upon that the word went out, at least among some delegates, that we were going to adjourn and I suppose some of them left, expecting that no action would be taken this afternoon. I therefore would move that the convention adjourn. I would recognize the right of the secretary to make some announcements before the motion is put.

PRESIDENT NISBET: Mr. Chase.

SECRETARY CHASE: I have the following requests for leave: Mr. Haskill wishes to be excused from Monday night's session to attend a business club in Lapeer; Mr. Wilkowski wishes to be excused from Monday's session; Mr. Suzore wishes to be excused from the session of Monday; Mr. Seyferth requests absence from Monday afternoon's session; Mr. White wishes to be excused from Monday afternoon's session to be absent on convention business; Mrs. Cushman requests to be excused from this afternoon's session to attend a funeral of a member of the family; Mr. Yeager wishes to be temporarily excused from Tuesday morning's session; Mr. Youngblood wishes to be excused from the sessions of Monday and Tuesday of next week; and Mr. Kelsey and Mr. Liberato wish to be excused from Monday's and Tuesday's session.

PRESIDENT NISBET: Without objection, they are excused. The question now is on the motion of Mr. Hutchinson. Mr. Tubbs.

MR. TUBBS: Mr. President, may I demand a division on this motion?

PRESIDENT NISBET: A demand for a division has been ordered. Sufficient number up. Mr. Ford.

MR. FORD: Mr. President, I have a preferential motion. I move that the convention stand adjourned until 6:00 p.m. on Monday evening.

PRESIDENT NISBET: The question is on the motion of Mr. Ford that when the convention adjourns, it stand adjourned until Monday at 6:00 o'clock. Those in favor of that motion will say aye. Those opposed, no. The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to fix the time to which to adjourn, the yeas are 33; the nays are 60.

PRESIDENT NISBET: The motion does not prevail. The question is now on the motion to adjourn. Those in favor will vote aye. Those opposed will vote no. Have you all

posal 4, A proposal to provide communication by the governor to the legislature on the condition of the state;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 4 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 37 of that committee, reporting back to the convention **Committee Proposal 23,** A proposal to prohibit the issuance of evidences of state indebtedness, except as authorized by the constitution, to authorize state borrowing and prescribe the method therefor, to limit the use of state credit and to permit the loaning of state funds to school districts under certain conditions, and covering the general subject matter found in sections 11, 10, 12 and 28 of article X of the 1908 constitution;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 23 as reported by the committee on style and drafting, see below under date of April 19.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: That is all the committee reports, Mr. President.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: There are no resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: Special orders.

SECRETARY CHASE: No special orders.

PRESIDENT NISBET: **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. All in favor say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will come to order. When the committee of the whole last sat considering the judicial article, we had before us **Committee Proposal 91,** A proposal pertaining to the supreme court. We had considered one amendment to section a of Committee Proposal 91. There are other amendments pending. The secretary will read the first proposed amendment to section a of Committee Proposal 91.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1564.

SECRETARY CHASE: Mr. William Hanna offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot. Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election. Vacancies shall be temporarily filled until the next statewide election by appointment of the governor until a successor is elected and qualified for the balance of the unexpired term but no such appointee shall be eligible to be a candidate for election to any office for 4 years after the temporary appointment.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Hanna, on which the Chair will recognize Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, in view of our action last week I request that commencing with the word "Vacancies" in the amendment, "Vacancies shall be temporarily filled" be striken as we have covered that in the other proposal concerning vacancies, and it should not now be a part of this. So I should like to request at this time we strike that part.

CHAIRMAN VAN DUSEN: In accordance with your request, Mr. Hanna, that portion of the amendment will be withdrawn. The question is on the amendment as revised offered by Mr. Hanna. Do you wish to be recognized with respect to your amendment, Mr. Hanna?

MR. W. F. HANNA: Mr. Chairman, just a brief explanation. This would provide that incumbent judges whose terms were to expire can file an affidavit of candidacy and not be required to go back to their political parties. However, if a political party wishes to nominate an opponent, they could. They do not have to. Thirdly, if a person felt that someone who was nonpolitical, so to speak, or not able to secure the nomination of a political party, wanted to run, they could file petitions and become a candidate. This would seem to come as close to a nonpartisan election as we could get.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Hanna. Those who are in favor of the amendment, as revised, will say aye. Those opposed will say no.

The amendment, as revised, is not adopted. Are there further amendments to section a?

DELEGATES: Division.

CHAIRMAN VAN DUSEN: A division is requested on the amendment offered by Mr. Hanna. Is the request supported? It is supported. Mr. Ford.

MR. FORD: In deference to the fact that we are still trying to get organized with all this new material on the desk, I hope you can slow down a little bit because some of us who wanted to support the Hanna amendment were caught asleep at the switch.

CHAIRMAN VAN DUSEN: The Chair is afraid that your slumbers lasted too long. Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, could the amendment be read again?

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to read the amendment again. Mr. Garvin.

MR. GARVIN: Mr. Chairman, do we have a copy of that amendment in all of our pile of things here?

CHAIRMAN VAN DUSEN: Yes. The amendment is on the desk of every delegate as a part of a 3 sheet item captioned, Amendments Pending to Committee Proposal 91, 3-9-62. It is the second of those amendments. The secretary will read the amendment.

MR. GARVIN: We are kind of rushed here.

SECRETARY CHASE: Mr. William Hanna has offered the following amendment as revised:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot. Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1

candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

Mr. Hanna has withdrawn the balance of that amendment.

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise, Mr. Lawrence?

MR. LAWRENCE: I think I would like to request that this amendment, as now revised, be divided into 2 questions. The first sentence being one, and the remainder of the amendment being the second part.

CHAIRMAN VAN DUSEN: Your request is in order, Mr. Lawrence. The question will be divided. Mr. Mahinske.

MR. MAHINSKE: Are you putting up for a vote now the second half that was striken by the proponent?

CHAIRMAN VAN DUSEN: No. Mr. Lawrence requested that the remaining portion of the amendment, after its revision, be divided into the first sentence, which reads "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot" be put first, and that the balance be put second. Is that correct, Mr. Lawrence?

MR. LAWRENCE: Yes.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the Hanna amendment. Mr. Iverson.

MR. IVERSON: Mr. Chairman, may I ask Mr. Hanna a question?

CHAIRMAN VAN DUSEN: Only with unanimous consent, Mr. Iverson.

MR. BENTLEY: I object, Mr. Chairman.

CHAIRMAN VAN DUSEN: There is objection. The question is on the first sentence of the Hanna amendment, which the secretary will read.

SECRETARY CHASE: The first sentence is:

[The first sentence of the amendment was read by the secretary. For text, see above, page 1569.]

CHAIRMAN VAN DUSEN: For what purpose does the gentleman rise, Mr. Ford?

MR. FORD: It seems that we are now talking about something we spent several hours with the other day and had to leave because we couldn't come to a solution.

CHAIRMAN VAN DUSEN: Mr. Ford, debate is not in order at this time.

MR. FORD: I am not going to debate. I am going to make a motion that we reconsider this so that we can discuss this matter before we dispose of it summarily. This is the keynote of the whole judicial article.

CHAIRMAN VAN DUSEN: Is there objection to reconsidering the vote with respect to the Hanna amendment?

MR. BENTLEY: I object because there has been no vote yet.

MR. FORD: There has been a vote and a ruling by the Chair.

MR. BENTLEY: Division has been asked for.

CHAIRMAN VAN DUSEN: Division has been asked for and ordered. The secretary advises that the motion is in order. The question is on the motion of Mr. Ford. The Chair suspects no motion is actually necessary, Mr. Ford. If there is no objection—

MR. BENTLEY: I object.

CHAIRMAN VAN DUSEN: Mr. Bentley objects to debate. The motion, however, is in order. Those in favor of reconsidering the vote by which the Hanna amendment as revised was not adopted will say aye. Those opposed will say no.

The motion to reconsider prevails. The question now is on the Hanna amendment as revised. Debate is in order. Mr. Ford, do you desire to be recognized?

MR. FORD: Mr. Chairman, I am still trying to find my copy of the Hanna amendment. If somebody else has a question, I would like to defer to them.

CHAIRMAN VAN DUSEN: Mr. Iverson, I believe that you had a question.

MR. IVERSON: You mean I am safe to ask a question now, Mr. Chairman?

CHAIRMAN VAN DUSEN: It is in order now, Mr. Iverson.

MR. IVERSON: Mr. Hanna, may I ask you: in qualifying "by a candidate with petitions," would you foresee any possible difficulty with respect to holding a primary, or what was your plan on that?

MR. W. F. HANNA: Mr. Chairman, Mr. Iverson, having circulated petitions on a nonpartisan ballot, I conceive of this to be a very difficult job, and especially when statewide. Three per cent of the vote cast for governor is quite a sizable number of signatures for a self starter. I did not conceive that it would be necessary to have a primary, though it is conceivable that you could have the incumbent, 1 judge from each political party, and 1 or 2 filing by petition and have 5 men running for 1 vacancy.

MR. IVERSON: Well, then, you did not provide for the partisan conventions if they so desire to nominate a candidate in each such instance?

MR. W. F. HANNA: Yes. They may. I did not require them to. Each political party at party convention may nominate 1 candidate for each position to be filled.

MR. IVERSON: Oh, yes.

MR. W. F. HANNA: I would assume that that is where the nominees would come from.

MR. IVERSON: Then, Mr. Chairman and Mr. Hanna, as far as the man who desires to run, if he obtains 3 per cent of the total vote cast for governor, or if there were 3 or 4 who were able to obtain that many signatures, they would all be listed on the primary election ballot?

MR. W. F. HANNA: No.

MR. IVERSON: Not the primary, but the general election?

MR. W. F. HANNA: General election ballot.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: Could I ask Mr. Hanna a question?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. POLLOCK: Mr. Hanna, I notice the figure 9. Nine is just 1 more than at present. I can understand the reason for making it an odd number, but why wasn't it 7 instead of 9?

MR. W. F. HANNA: Practical politics, Mr. Pollock. I did not want to deprive any of the incumbent justices of the privilege of running, other than so that they wouldn't have to run against other incumbents.

MR. POLLOCK: Actually the needs of the situation do not require an extra justice?

MR. W. F. HANNA: No, sir. This was political expediency.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: May I inquire of Mr. Hanna?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. LEIBRAND: As I understand it, Mr. Chairman, the question has now been divided so that we would first be considering only the first sentence, is that correct?

CHAIRMAN VAN DUSEN: That is correct, Judge Leibrand.

MR. LEIBRAND: Then, as I read the sentence, Mr. Hanna, that would continue in effect just what we have now, except that the number of justices would be increased from 8 to 9 and the terms would be increased from 8 years to 10 years. Am I wrong in this viewpoint of the first sentence of your amendment?

MR. W. F. HANNA: Mr. Chairman, Mr. Leibrand, you are correct.

MR. LEIBRAND: Thank you.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, just one question to Mr. Hanna. This amendment doesn't contain anything with respect to an incumbency designation. Are you leaving that out because it is being dealt with somewhere else, or what is the situation?

CHAIRMAN VAN DUSEN: Mr. Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, I believe this was dealt with elsewhere. We have already said that any incumbent judge was entitled to the incumbency designation. This was under, as I understand it, the general provisions of Committee Proposal 96; applied to all judges and justices.

MR. MARTIN: Would this apply to a justice who had been appointed as distinguished from a justice who had been elected?

MR. W. F. HANNA: Mr. Chairman, Mr. Martin, I am assuming that no judges will be appointed as we have now proceeded, but that we are now proceeding along the line whereby vacancies which exist will be temporarily filled by the supreme court, and the vacancy permanently filled not by appointment but by election.

MR. MARTIN: So that in an election where a vacancy was being filled, there would be no one running with an incumbency designation, am I right?

MR. W. F. HANNA: Unless one of the current members of the supreme court saw fit to resign and run for a new term, and I suppose he would be entitled to an incumbency designation.

CHAIRMAN VAN DUSEN: Mr. Downs, were you seeking recognition?

MR. DOWNS: No.

CHAIRMAN VAN DUSEN: Mr. Iverson.

MR. IVERSON: Mr. Chairman, it seems to me, in reading over this first sentence, the answer Mr. Hanna gave to Judge Leibrand was not correct, because as I read the last part of the sentence it does include the right of an incumbent to qualify by filing an affidavit. Is that right?

CHAIRMAN VAN DUSEN: Mr. Iverson, Judge Leibrand's question was directed only to the first sentence.

MR. IVERSON: That is right, and that is included in the first sentence, is it not?

MR. W. F. HANNA: The first sentence stops after "statewide ballot."

MR. IVERSON: That's in 2 parts.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the amendment offered by Mr. William Hanna. Mr. Ford.

MR. FORD: Mr. Chairman, we had some opportunity to look at this the other day. Although this is somewhat of a departure from the language advocated by the minority of the committee in its minority report to the committee's proposed amendment to Committee Proposal 96, there is nothing new here in this language that is too startling except the 10 year term. No one has talked about a 10 year term before now. The committee has recommended the 9 judges. Mr. Hanna was not a member of the committee when the recommendation was made, or when we discussed the reasons for it. There were reasons other than political expediency. I think the chairman of the committee gave several of them when we started to discuss section a on the day that we finally passed over it.

Although this is a departure from the present procedure, in that it permits an incumbent judge to renominate himself without reference or recommendation of any of the political parties in the state, it certainly seems preferable to any of the other proposals that have been made on the floor and elsewhere here, and I would urge support of this amendment, making it very clear that from where I stand I consider this a retreat in the form of compromise in an attempt to get something that will serve the state of Michigan, and it may not make all of the members of either of the 2 parties represented here happy, but at least we are now openly—and I am speaking for the members of the minority on the committee—making an attempt to compromise on this very important part of the judicial article, in an attempt to resolve a very knotty problem. I think that we should look at it very carefully and give it consideration with that thought in mind.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, fellow delegates, before I would be in a position to support this amendment, I have very serious concern about increasing the number of justices to 9 because we have listened in the committee at the work load of the court now, and I am of the opinion that if we get an appellate court, I doubt very seriously if we would need the 9 justices, and I don't know what we are going to increase the number for.

CHAIRMAN VAN DUSEN: The question is on the first sentence of the amendment offered by Mr. William Hanna, which the secretary will read.

SECRETARY CHASE: The first sentence is:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot.".

CHAIRMAN VAN DUSEN: Division has been ordered. Those who are in favor—Mr. Norris.

MR. NORRIS: Mr. Chairman, I would like to ask a question, if I may, of Mr. Danhof, chairman of the judicial committee.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Norris.

MR. NORRIS: I gather that serious attention was accorded the matter of the number of justices on the supreme court by your committee, and that relevant data regarding the work load was of appreciable moment to the committee. Could you help us with regard to what the thinking was of your committee and of the justices regarding the work load in the event that there would be an intermediate appellate court?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Norris, let me start with this particular statement: we first agreed that we should go to an odd number. We felt that with the court of appeals, the supreme court should consist of an odd number of justices so that we wouldn't have 4 to 4 decisions, which seem to be undesirable, at least to a lot of people. Then you reach the problem of whether it should be 7 or 9. The reason that we reached 9 in the original committee proposal was because of the district system which, from a geographical and from a district setup, was ideally suited. That is, it should become 9, considering Wayne county, and if you are going to elect by districts it should be 9. As Mr. Barthwell pointed out, we had considerable discussion concerning whether we should go back to 7 or leave it at 8, or go to 9. Because of the fact that we reached the district system, we put in 9.

From a work load, it is somewhat difficult to ascertain. The present work load of the court would seem to indicate that 8 is sufficient, and they could probably do it with 7, assuming a court of appeals; that is, they could handle the work. I don't have any doubt about that. I think we get back to what Mr. Hanna points out—political expediency, acceptance by the public, and so forth. My own personal views are that I would rather increase to 9. It seems this is what we have in the U. S. supreme court. I think the people somewhat expect it, and I think that 9 would be a preferable compromise rather than 7. From the work load standpoint, the work load is not such, I do not think, that it could not be handled by 7, but we would hope that they would continue to improve the consideration that they give to cases, and my own personal recommendation would be 9.

I submit, Mr. Norris, there is nothing magical about the number. You can go either way, and I think you will get a good court, a court that can handle the business. I think the best consideration is the idea of the political expediency and the fact that the terms are so set so they will be running at regular intervals. Now, of course, with the 9 from the districts it worked out fine. Mr. Hanna's plan is 9 on a 10 year term. How would this work out? You are going to

elect some every 2 years. You would have 2 every 2 years and 3 on the one election. If you have 7, then you probably would have to reduce the term to less than 10 years.

Mr. Ford just handed me the results of the bar poll, and the question was, "How many members should the supreme court have?" For 8, 3,147; 9, 4,286; and 321 for any other number, which we will mark as 7. So it appears that the majority of the attorneys, at least, is thinking of a court of 9. I think perhaps it is just history that they think 9 more than anything else, and 5 to 4 decisions they are used to, and things like that. That is about the explanation that I can give you.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: In connection with that first sentence, it seems to me we ought to give a little more consideration to the increasing of the number of justices before definitely deciding. For that reason, it seems to me we should vote against the first sentence. After all, the United States supreme court—handling the work of 50 states, and I don't know how many circuit court of appeals—has 9 men. It hardly seems to me that if we provide a court of appeals for our own state, from which appeals can only be taken by leave to appeal, that it would be necessary to saddle the people with 2 extra judges; in other words, from 7 to 9, if 7 could do the work.

The problem of how to reduce the number from 8 to 7, I will be very frank with you, I think presents something for consideration, and that is why I am wondering if it might be possible to vote against this at this time and see if something couldn't be worked whereby maybe the present number could continue until such time as there was a retirement or a person who would not be running again, or an incumbent judge who did not run again, and in that way reduce the number without hurting present justices. For that reason, it seems to me that a little more time should be given before adopting this.

CHAIRMAN VAN DUSEN: Mr. Downs.

MR. DOWN: I have a point of parliamentary inquiry, Mr. Chairman. Could we divide the sentence by leaving out the figure 9 or the figure 7 so it would read, "The supreme court shall consist of justices to be elected for a 10 year term," and so forth? If that could be done, I would like to request a division of the sentence and then speak on it.

CHAIRMAN VAN DUSEN: The Chair takes it, Mr. Downs, that the purport of your request is that we will vote first on the question of the supreme court consisting of justices to be elected to a 10 year term on a nonpartisan statewide ballot, and then on the question of the number of justices.

MR. DOWNS: That is correct.

CHAIRMAN VAN DUSEN: The question is so divisible, Mr. Downs, and if you request it it will be so divided.

MR. DOWNS: I request a division accordingly, Mr. Chairman. I would like to speak briefly on it. The reason for that is I do believe that we are coming to considerable agreement on this very important judicial section, and I think Delegate Ford indicated that perhaps it is not the first choice of any delegate, but perhaps it is one that is the second choice of an overwhelming number of delegates, and I would not like to see the first sentence fall because of the difference over the number of justices. I think there is considerable merit in this. As it now stands it provides we should have an elected supreme court for a 10 year term, a nonpartisan ballot and a statewide election, and I would hope that people can support this who might differ on the number of justices, and then we could handle that question separately. I therefore urge support of the amendment as it has been divided.

CHAIRMAN VAN DUSEN: The question is upon the portion of Mr. Hanna's amendment which reads as follows:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot.".

Mr. Danhof, do you desire to be recognized on that question?

MR. DANHOF: Well, we are referring to the number. I think that would be in order.

CHAIRMAN VAN DUSEN: The number is not before us at the moment, unless you want to discuss it generally. The question as put will not include the number.

MR. DANHOF: Whether it be 9 or 7, when we get to that I can further get some information to Mr. Norris.

CHAIRMAN VAN DUSEN: We will get to that later, Mr. Danhof. The question now is upon the Hanna amendment which reads, "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot." Division has been ordered. Those who are in favor of that portion of the Hanna amendment will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the first sentence of the Hanna amendment without the number of justices, the yeas are 56; the nays are 52.

CHAIRMAN VAN DUSEN: That part of the amendment is adopted. The question is now upon the second portion of the first sentence of Mr. Hanna's amendment, inserting the figure "9" before "justices". Mr. Ostrow.

MR. OSTROW: Mr. Chairman, ladies and gentlemen of the committee, I support Mr. Hanna's amendment to have 9 justices of the supreme court, and I am at a loss to understand this committee quibbling about the services of 2 people. The state of Michigan spends $5 million a day. We have 1 commission, the civil service commission, which has as its constitutional budget 1 per cent of the entire state payroll. We have provided for 80 people to set policy for 10 universities, when those universities are equipped with presidents, deans, assistants to the presidents, and an unlimited number of policy making people, including the highest paid state official in the state of Michigan. Under those circumstances, to quibble about the services of 2 justices is just not understandable to me.

CHAIRMAN VAN DUSEN: The Chair will ask the committee to be in a little better order, please. Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, in further answer, perhaps, on this number, and to answer Mr. Norris' inquiry: Mr. Norris, from 1930 to 1957 the average case load per opinion per justice was 45.3. Now, as you have noted before, this was extremely high during the depression years, '31, '32, '33. It went down to a low of about 32.2 in 1946. In 1960, from the information we obtained from Justice Souris, the opinion load per judge was 32.8. In 1959 it was 30.1, and in 1958 it was 35.9. In 1957, by the way, it was 29.6. So it reached a low in the middle '50s, and now has been seemingly climbing back to a more substantial number. Now, if you reduce this to 7, and assuming a relatively same case load, although it could be lightened considerably by reason of the fact that we have a court of appeals, you can find the per opinion.

For the information of the committee I have here the number of members of the supreme courts over all of the states in the union. There are 5 states that have 9 members on the supreme court, to my best account. There are 23 states that have 7 members on the supreme court. Then the remainder of the states go down from 7 through 5 to 3, with the more sparsely populated states having but 3 justices; Alaska being the last to set up a court having 3 justices. Iowa set up a 5 man supreme court. The largest number of states do have 7 members in their particular supreme courts. For those of you who are interested in surrounding states, Illinois has 7, Indiana has 5, New York has 7, Pennsylvania has 7, Ohio has 7. The states with 9, for your information, are Washington, Texas, Oklahoma, Iowa, and there is one more. This is for the information of the committee as you vote upon the numbers. My own personal opinion is, I would support Mr. Ostrow.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I urge you to very seriously consider this matter and cast your vote in favor of the number 7 rather than in favor of the number 9. I think that other things being equal we can all see that a court of 7 can operate more efficiently and more rapidly on matters than can a court of 9. With respect to the question of expediency, I would think it would be quite expedient for the convention to demonstrate that it is possible

to reduce the number of office holders in a particular branch of government when the logical arguments would indicate that would be desirable. Therefore, I urge you to vote against the number 9 so that the number 7 may be adopted.

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, members of the committee, I would subscribe to the idea that there ought to be 9 justices in accordance with the original Hanna amendment for 2 reasons. First, I think we can anticipate, as a result of the provision which we have thus far adopted regarding administrative tribunals, a very sizable number of appeals which would go all the way to the Michigan supreme court. I think the kind of tests which have thus far been looked upon with favor, namely, that the tribunal ought to evaluate evidence on the basis of reliability, probativeness and substantiality will mean that the courts will be the basis for a considerable volume of increased business. I think if that is the intent of the convention, then we ought to provide for that contingency. The second reason that I subscribe to the number 9, because of an increased volume of business, is because it can reasonably be anticipated that a sizable number of criminal appeals which will go to the intermediate appellate court might also by leave be entertained by the supreme court, and if we are interested in seeing that this process be accorded all the way up, it seems to me we ought to be thinking in terms of providing the judicial means for this anticipation. I think that these 2 reasons can be amplified, Mr. Chairman, by other types of things which we are doing in this convention which will increase the work load of the courts and increase the work load of the appellate court. I would therefore urge the support of 9 as the number of Michigan supreme court justices.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. I understand there was no amendment offered to insert the number 7. I understand some people are talking about voting for 7. Is there an amendment for that?

CHAIRMAN VAN DUSEN: The question before the committee is inserting the figure "9" before the word "justices" in the first line of Mr. Hanna's amendment.

MR. FAXON: And there is no amendment?

CHAIRMAN VAN DUSEN: There is no amendment for the number 7 currently before the committee, Mr. Faxon.

MR. FAXON: Thank you.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Parliamentary inquiry, Mr. Chairman. If the number 9 is to be used, is this an amendment? As I understand, the committee proposal presently reads 9.

CHAIRMAN VAN DUSEN: The Hanna amendment, Mr. Brown, is a complete substitute for section a.

MR. G. E. BROWN: However, the first sentence, Mr. Chairman, is the first sentence of the committee proposal in section a.

CHAIRMAN VAN DUSEN: Mr. Brown, the Hanna amendment is, as the Chair stated, a complete substitute for section a of Committee Proposal 91 as it has been divided. The committee has now adopted a sentence reading as follows, "The supreme court shall consist of justices to be elected for 10 year terms on a nonpartisan statewide ballot." The question now is inserting the figure "9" before the word "justices".

MR. G. E. BROWN: I accept the ruling of the Chair.

CHAIRMAN VAN DUSEN: Division has been ordered. Mr. Lawrence.

MR. LAWRENCE: To clear up any question on it, the proposed amendment to Committee Proposal 91 filed by Mrs. Judd, Mr. Tubbs and myself, which was, in effect, the ABA plan, and the part on section g was voted down, contained at the top a substitute for section a, which has in it that there shall be 7 justices. So there is an amendment in to that effect. That was not voted on.

CHAIRMAN VAN DUSEN: The question is on the portion of the Hanna amendment which inserts the figure "9" before the word "justices" in the first line. Division has been ordered. Mr. Faxon.

MR. FAXON: I just think it is interesting to note that at the time the federal constitution was adopted back in 1789, and they approved the number 9, the population at that time was less than 2 million people. I support 9. I should think there is reasonable division behind that number.

CHAIRMAN VAN DUSEN: Those in favor of the Hanna amendment to insert the figure "9" before the word "justices" in the first line of section a will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the number of justices at 9, the yeas are 84; the nays are 27.

CHAIRMAN VAN DUSEN: The amendment is adopted. The question now is upon the balance of the Hanna amendment as revised, which the secretary will read.

SECRETARY CHASE: "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled. An incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term. Any person qualified to be a supreme court justice may also become a candidate upon the filing with the secretary of state a nominating petition signed by qualified electors in number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

CHAIRMAN VAN DUSEN: Those who are in favor of that portion of the Hanna amendment as so read will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment, the yeas are 52; the nays are 59.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91? Mr. Downs.

MR. DOWNS: Point of inquiry, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Downs.

MR. DOWNS: Now that we have voted on this whole section, is it in order to offer as an amendment any one sentence of that?

CHAIRMAN VAN DUSEN: You mean any one sentence of the Hanna amendment?

MR. DOWNS: For example, would it be in order to offer the second sentence, "Commencing at the first regular statewide election?" Could that be offered as an amendment now that we have voted on the 3 sentences?

CHAIRMAN VAN DUSEN: In the opinion of the Chair, Mr. Downs, that would be in order.

MR. DOWNS: Well, I will —

CHAIRMAN VAN DUSEN: There may be other pending amendments, however.

MR. DOWNS: Oh, I am sorry. If there are others — I don't have it written. I just want to know if that would be in order. Are there other pending amendments, Mr. Chairman?

CHAIRMAN VAN DUSEN: Mr. Secretary, have you further amendments to section a? Mr. Lundgren.

MR. LUNDGREN: Point of order, Mr. Chairman. It seems the other day when we had some amendments here, and they were both ruled by yourself that they were the same thing to each other, and when one was defeated the other one could not be brought on the floor. I presume this follows the same course?

CHAIRMAN VAN DUSEN: The situation is a little bit different here, Mr. Lundgren, in that had one of these sentences been offered alone and defeated, in the opinion of the Chair it would not then have been in order unless so completely combined with the other provisions as to make a new thought. Where, however, several ideas are presented at once and defeated as a package, one of those ideas which stands alone independently, and would have a different meaning if divided, would, in the opinion of the Chair, be in order.

MR. LUNDGREN: Is that the "judge's" ruling?

CHAIRMAN VAN DUSEN: That is the "judge's" ruling subject to the appeal which is always available, Mr. Lundgren. Mr. Everett.

MR. EVERETT: Parliamentary inquiry, Mr. Chairman. Have we not carried the first sentence of the Hanna amendment but none of the rest of it?

CHAIRMAN VAN DUSEN: Section a now reads, "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot." Are there further amendments to section a? There are no further amendments to section a, Mr. Downs.

MR. DOWNS: May I offer the amendment from the floor? What we have before us—it would be the first sentence of what we just voted on, "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled."

SECRETARY CHASE: Mr. Downs offers the following amendment:

1. Amend page 1, line 6, after "statewide ballot.", by inserting the second sentence of Mr. Hanna's amendment which reads as follows, "Commencing at the first regular statewide election following the adoption of this constitution each political party at party convention may nominate 1 candidate for each position to be filled.".

CHAIRMAN VAN DUSEN: Mr. Hoxie.

MR. HOXIE: Mr. Chairman, point of order. The question was not divided. It is identical language. I question the amendment is in order.

CHAIRMAN VAN DUSEN: The identical point was just made by Mr. Lundgren, Mr. Hoxie, and it was the opinion of the Chair that because the language might have a different meaning if combined with the remaining sentences than it has standing alone, it is in order as a separate amendment at this time.

Those who are in favor of the amendment offered by Mr. Downs will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section a? If not, the secretary will —

SECRETARY CHASE: Mr. Chairman, Mr. Ford offers the following amendment:

1. Amend page 1, line 6, after "ballot.", by inserting "Nominations for justices of the supreme court shall be made as now or hereafter provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford, on which the Chair will recognize Mr. Ford.

MR. FORD: You can find this language in the present Constitution of 1908 on page 23 of the little volume. If you want to find it quickly, it is section 23 of article VII, and it is found in about the middle of the section.

This came about as a result of the fact that in 1939, and again in 1947, and again in 1955, the people of this state adopted a series of amendments to the constitution establishing nonpartisan elections, and it was apparently determined at that time, or at those times, that the method of nomination of the supreme court could not be frozen into the constitution, become a rigid system. Now, the language that is proposed in this amendment would permit a district plan of nomination. It would permit a nomination by partisan primary or by party convention, as is now conducted, or it would permit a statewide nomination. It would permit, in other words, a nomination in any way that the legislature might see fit to establish in the future and, of course, as I indicated the other day, we felt that this might be preferable to trying here to arrive at a specific method of nominations, because if a method is arrived at by the legislature and found to be unsatisfactory, they can change it and do something else. But at least this is a step toward the direction of allowing the legislature latitude to work out the best possible system that might be used in the state of Michigan from time to time without saddling the state with a specific system which can only be changed by constitutional amendment.

CHAIRMAN VAN DUSEN: On the Ford amendment, the Chair recognizes Mr. King.

MR. KING: Mr. Chairman, fellow delegates, could I offer an amendment to Mr. Ford's amendment from the floor?

CHAIRMAN VAN DUSEN: Without objection, Mr. King, and in any event the Chair would request that you submit it in writing at the earliest opportunity.

MR. KING: What I have in mind is: in line 3 of Mr. Hanna's amendment I would follow the wording of Mr. Ford's amendment by putting in the words "however, provided that," and then line 3, "an incumbent judge whose term is to expire may become a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term."

CHAIRMAN VAN DUSEN: Does the secretary have the amendment?

SECRETARY CHASE: Mr. King offers the following amendment to the amendment offered by Mr. Ford:

1. Amend the amendment, at the end thereof, after "law" by changing the period to a colon and inserting "Provided however, That an incumbent judge whose term is to expire may became a candidate by filing an affidavit of candidacy with the secretary of state not less than 180 days prior to the expiration of his term.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. King to the amendment offered by Mr. Ford, and on the King amendment the Chair would recognize Mr. King.

MR. KING: Speaking very briefly, Mr. Chairman, I would just state that this part of Mr. Hanna's amendment, I think, appeals to a lot of us. If Mr. Ford's amendment passes, there is no reason to believe that the situation in the future will be any different than it is at the present time; which might be all right. I am not seriously objecting to that, but I do think that an incumbent judge ought to have the right to nominate himself without going back to a party convention. This I conceive to be one of the primary evils in the present system, and for that reason I would urge the support of my amendment to Mr. Ford's amendment.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I would like to ask Delegate King a question through the Chair. Then, if an incumbent judge is a member of one party, would the party have a right to nominate another candidate also?

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: I would see nothing in my amendment that would prevent that.

MR. BARTHWELL: Okay, thank you.

CHAIRMAN VAN DUSEN: Mr. Downs, do you desire to be recognized on the King amendment?

MR. DOWNS: Yes. Mr. Chairman, I wish to speak against the King amendment, and not for — well, perhaps more for the argument of consistency. I did vote for the provision of the Hanna amendment that would provide for the 3 systems of nominations; that is, by convention, by affidavit and by petition. However, since the committee did turn that down, as well as my attempt to start this piecemeal — I would have put the other pieces in, Mr. King, if the other had passed — I think that we should be consistent and either provide completely for the method of nomination or do as Mr. Ford's amendment does, leave it entirely up to the legislature. I think by leaving that up to the legislature, the legislature, if it wishes to, could include the amendments suggested by Mr. King, it could include the other systems suggested by Mr. Hanna. I, therefore, more on the basis of consistency, which I think on occasion has arguments in its favor, suggest that we vote the King amendment down to be consistent with our other section and leave it simply "as provided by law," with the first sentence already adopted.

CHAIRMAN VAN DUSEN: Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, I think this should be passed at this time. Actually this part that is being brought up now is the same thing, different wording, that we attempted in Committee Proposal 96, section 1, and which, as Miss Donnelly pointed out, should be held off until after we decided on the method of selecting supreme court justices, and it was favorably voted on by this committee. This is exactly the same

proposition, and should be put over along with the section 1 of 96 to be considered after the supreme court method of selecting judges has been decided.

I am in favor of Mr. King's amendment, the self nomination or filing of a candidacy affidavit by an incumbent. I don't believe that it should be left to the legislature or we will have the same thing we have had in the past, which brings politics every so often back into the court. Therefore I would move that this be passed, along with section 1 of Committee Proposal 96, until after consideration of Committee Proposals 91, I believe it is, and 92, if those are the ones for the supreme court and the appellate court.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment until after Committee Proposal 91 has been finally acted upon. Has the Chair correctly stated your motion, Mr. Lawrence?

MR. LAWRENCE: Mr. Chairman, things have been going so fast here that — the proposal that I am referring to is the method of election of the supreme court and the method of election of the appellate court, if an appellate court is provided for. We are on Committee Proposal 91. I am not assuming we will keep an appellate court; for some reason I am assuming, maybe irrationally, we will keep a supreme court. Yes, it would be after completion of 91 and 92.

CHAIRMAN VAN DUSEN: The question is on the motion — Mr. Romney.

MR. ROMNEY: I rise to support the Lawrence motion to postpone, in line with our consideration the other day. On the other hand, if we are not going to postpone consideration of this, I think it imperative that we approve the King amendment. The most indefensible aspect is the matter that the King amendment deals with.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment until after the committee has dealt with Committee Proposals 91 and 92. Mr. King.

MR. KING: Mr. Chairman, I would like to speak against Mr. Lawrence's motion simply for the reason that I don't know how to vote on Mr. Ford's amendment unless I have at least this much protection against this evil which I foresee in the present system, and for which I have no reason to believe will be changed in the future by the legislature. So I would urge that you defeat the Lawrence motion and then pass the King amendment, and then do as you see fit on the Ford amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence, did you desire to correct the Chair's statement of your motion?

MR. LAWRENCE: Yes. I am tempted to defer both Mr. King's amendment and the Ford amendment.

CHAIRMAN VAN DUSEN: Mr. Lawrence's motion is to defer further consideration of the King amendment and the Ford amendment until the completion of consideration of Committee Proposals 91 and 92. Mr. Ford.

MR. FORD: Well, I think that the delegates ought to have a look at what 96 l is that Mr. Lawrence is talking about. It is on page 579 of the journal. When I asked Mr. Lawrence the other day if it was his intention that this provision meant the nomination of a candidate for judge, he said "No, it means simply a substitute for the filing of nominating petitions." He also said — and this section 1 refers to all judicial offices, lumps the circuit court together with the supreme court and probate court — that he did not intend that the primary election provision for the circuit court or probate court now in effect would in any way be affected by this; that this would merely provide a method of getting your name on the ballot in the primary election, as distinguished from getting you nominated for the office. If that is correct, then there is no reason at this point to defer consideration of our method of nomination for the office, and for the consideration of how you will get your name on the ballot in the primary election.

Now, Mr. Lawrence, I assume that I asked the question directly and got a direct answer from you, that you did not intend, and that the committee did not intend section 1 to be a substitute for any other method of selection, but merely a substitute for nominating petitions.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair believes that the question must be confined at this point to the Lawrence motion, which was to defer further consideration of the King amendment and the Ford amendment until following action with respect to Committee Proposals 91 and 92. Mr. Lawrence.

MR. LAWRENCE: Mr. Chairman, that is exactly the point that I was making. When section 1 of Committee Proposal 96 came up and we voted to defer, it was for the purpose of meeting the objections, the points that Mr. Ford raised, and those were the points that are involved in the present Ford amendment as proposed to be amended by the King amendment. And that is why action on that should be deferred, and why I have made the motion.

CHAIRMAN VAN DUSEN: Dr. Nord.

MR. NORD: I oppose the Lawrence motion. I believe that if we keep on deferring this question until we have decided another one, and then defer that one until we have decided another one, we can fix things up so we can never end. That is about the position we are maneuvering ourselves into. We have deferred this several times. I cannot understand why anyone should argue that we should defer action on 91 until we have completed 91. This doesn't make any sense. This is Committee Proposal 91 that we are dealing with. Let's finish 91, and then when we finish 91, and if you wish to finish 92, then we can go on to whatever has been deferred. But if we defer 91, then we can never finish. Let's finish this one, then we will finish 92, then we will finish 96, and then we will finish all the rest of them and we can go home.

CHAIRMAN VAN DUSEN: Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. What is there remaining in Committeee Proposal 91 for us to consider that we already haven't considered? I thought that we had taken care of all the other sections of 91 outside of this supreme court. Is there something else in 91?

CHAIRMAN VAN DUSEN: Mr. Secretary, have you further amendments to either section a or section g or the body of Committee Proposal 91 currently pending?

SECRETARY CHASE: We have another amendment to section g and an amendment to the body of the proposal, Mr. Chairman.

MR. FAXON: So then, what would happen is that if we passed over this, then we would go on to these amendments which are pending to section g?

CHAIRMAN VAN DUSEN: That is right, and further carrying out of the motion of Mr. Lawrence, we would then proceed to consideration of Committee Proposal 92, and would then return to the Ford amendment and the King amendment thereto.

MR. FAXON: I am against passing over this now. I don't think we have that much on this question that we already haven't discussed. We are ready to talk about it now.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King amendment and the Ford amendment until after the completion of Committee Proposals 91 and 92. Mr. Everett.

MR. EVERETT: Mr. Chairman, I would agree with Dr. Nord and oppose this motion. To me, we can never get back to 96 l until we divide the question, which we are now about to do. The difficulty when we were there before was there was confusion as to how you nominate supreme court justices and how you nominate the others. Now there is an effort being made to eliminate that confusion. If we adopt Mr. King's amendment we will have eliminated the confusion, and when we do get back to 96 we will be able to consider then only circuit judges and probate judges. Without eliminating that confusion, we will never be able to decide 96 l, and we will never be able to decide this. Furthermore, in answer to Mr. Lawrence's suggestion, if we defeat his motion to pass this over, and if we adopt these 2 amendments before us, we will have decided how to elect the supreme court. There won't be anything left to decide in that regard. We will, of course, have to consider the amendments pending, but if we agree that Mr. Hanna's

amendment as amended is the answer, we won't have to come back to it. So I would oppose passing over it, feeling we ought to decide this issue right now.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Lawrence to defer further consideration of the King and Ford amendments. Those who are in favor of Mr. Lawrence's motion will say aye. Those opposed will say no.

The motion does not prevail. The question is now on the King amendment to the Ford amendment, on which the Chair will recognize Mr. Romney.

For what purpose does the gentleman rise, Mr. Iverson?

MR. IVERSON: I move that the committee do now rise.

CHAIRMAN VAN DUSEN: Mr. Iverson moves that the committee do now rise. Those who are in favor of the motion will say aye. Those opposed will say no.

The motion does not prevail.

A DELEGATE: Division.

CHAIRMAN VAN DUSEN: A division is requested. Is the demand supported? It is supported. Those who are in favor of the motion that the committee do now rise will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee do now rise, the yeas are 67; the nays are 45.

CHAIRMAN VAN DUSEN: The motion prevails. The committee will rise. Dr. Nord, you will be in order as soon as the president resumes the Chair.

MR. NORD: It would be too late. I was going to move we reconsider.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. Nord that we reconsider the vote on the motion that the committee do now rise.

MR. NORD: Mr. Chairman, may I address myself to that point?

CHAIRMAN VAN DUSEN: You may proceed, Dr. Nord.

MR. NORD: Mr. Chairman, on Friday we had a rather abortive session. We took up half the day in order to come here to settle this question. We came here. We are about to settle this question. Now we are going to chicken out some more. Now, we haven't had any debate on whether we should rise, but rising at ¼ past 5, obviously only after an hour or so of debate, just when we are about to finish the question, it seems to me is absolutely unjustified. We have got to end this convention some time or other, even if it isn't what we like there. As somebody said, "All good things must come to an end," and as somebody else has said, "And this too shall pass away." Either way you look at it, we must terminate this convention, and we must make decisions. I object to having such an easy afternoon of it. I think we should stay here and solve our problems.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. Nord to reconsider the vote by which the committee agreed to rise. Those in favor of Dr. Nord's motion to reconsider will say aye. Those opposed will say no.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is there support? It is supported. As many as are in favor of Dr. Nord's motion to reconsider the vote by which the committee agreed to rise will vote aye, and those opposed will vote no. The secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to reconsider the yeas are 47; the nays are 64.

CHAIRMAN VAN DUSEN: The motion to reconsider does not prevail. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91,** it has adopted an amendment thereto; has considered an amendment; and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Are there announcements?

SECRETARY CHASE: There will be a Republican meeting immediately following this session in rooms B and C. (laughter)

The committee on administration will meet tomorrow, Tuesday, at 1:00 o'clock p.m. Walter DeVries, chairman.

PRESIDENT NISBET: The Chair recognizes Mrs. Butler.

MRS. BUTLER: Mr. President, when the secretary told about Judge Mosier's accident, I felt very sorry for several reasons; mostly, of course, because he was hurt. But a few weeks ago I had the privilege of sitting next to him at dinner, and he said he had been paying insurance, car insurance, since 1912 and his insurance company had never had to pay out a cent for him. At the same time he told about taking a trip in this beautiful Ford he had from Dowagiac to Paw Paw, and on a sand road, and on the way, halfway between, his fan belt broke, and he didn't know what he was going to do. He was a long way from anywhere, and there were no garages. So Mrs. Mosier was with him, and she got in the car and undressed and took off her corset string and made a fan belt out of it, and he got home. And I was just thinking of that today; what a cute story that was. (laughter)

PRESIDENT NISBET: Dr. Anspach.

MR. ANSPACH: Point of order. I would think that would be quite appropriate, of course, for the purpose of holding things together. (laughter)

PRESIDENT NISBET: Mr. Hoxie.

MR. HOXIE: Mr. President, I move that when we recess, we reconvene this evening at 7:30.

PRESIDENT NISBET: The question is on the motion of Mr. Hoxie that when we recess, we stand in recess until 7:30. Those in favor will say aye. Those opposed, no.

The Chair is in doubt. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote. Mr. Marshall.

MR. MARSHALL: I just want to ask a question, Mr. President.

PRESIDENT NISBET: All right, Mr. Marshall, while we are doing it you ask the question.

MR. MARSHALL: Doesn't this necessitate a change in the rules we adopted when we adopted the rules to reconvene at 8:00 o'clock on Monday night, or am I incorrect?

PRESIDENT NISBET: The Chair is informed this has been done by motion right along, Mr. Marshall.

MR. MARSHALL: Of course I am incorrect.

SECRETARY CHASE: On the motion to recess until 7:30, the yeas are 43; the nays are 72.

PRESIDENT NISBET: The motion does not prevail. The Chair recognizes Mr. Prettie.

MR. PRETTIE: Mr. President, I move that we do now recess until 8:00 p.m. this evening.

PRESIDENT NISBET: The question is on the motion of Mr. Prettie. Those in favor will say aye. Those opposed, no.

The motion prevails. We are recessed until 8:00 o'clock.

[Whereupon, at 5:25 o'clock p.m. the convention recessed; and, at 8:00 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: Those in favor of the motion please say aye. Opposed, no.

The motion prevails. Mr. Van Dusen.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the **committee of the whole.**]

CHAIRMAN VAN DUSEN: The committee will be in order. When the committee rose this afternoon we had been considering **Committee Proposal 91,** A proposal pertaining to the supreme court. Specifically, we had under consideration section a of that proposal, and had adopted an amendment thereto reading, "The supreme court shall consist of 9 justices to be elected for 10 year terms on a nonpartisan statewide ballot." The pending business was an amendment offered by Mr. King to an amendment offered by Mr. Ford adding certain language to section a of Committee Proposal 91 as so amended. The question is now upon the amendment offered by Mr. King. Mr. King.

MR. KING: Mr. Chairman, at this time I would like to withdraw my amendment.

CHAIRMAN VAN DUSEN: Mr. King withdraws his amendment. The question is upon the amendment offered by Mr. Ford to section a of Committee Proposal 91. It has been requested that the secretary read the amendment. The secretary will do so.

SECRETARY CHASE: Mr. King has offered the following amendment to add to the language of section a the following: "Nominations for justices of the supreme court shall be made as now or hereafter provided by law.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Ford which the secretary has just read. Mr. Garvin.

MR. GARVIN: Did the secretary say Mr. King?

CHAIRMAN VAN DUSEN: The secretary was in error, and the Chair hopes corrected it. You are quite right. The amendment is the amendment offered by Mr. Ford. The secretary will read the amendment again.

SECRETARY CHASE: Mr. Ford's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1574.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment so offered by Mr. Ford will say aye. Those opposed will say no.

The Chair is in doubt. Those who are in favor of the amendment offered by Mr. Ford will vote aye. Those who are opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford the yeas are 38; the nays are 78.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to section a?

SECRETARY CHASE: Mr. Higgs has filed the following amendment:

1. Amend page 1, line 8, after "ballot.", by adding a new paragraph to read as follows:

"Justices of the supreme court shall be elected at statewide partisan elections. Incumbent justices of the supreme court may become candidates for reelection by filing a declaration of intention as provided by law. Other candidates may be nominated by state party conventions. No candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention. Persons nominated at party conventions shall be listed on the ballot under the party name and label of the party nominating them. Incumbents filing a declaration of intention shall be listed on the ballot under the party name and label of the party originally nominating them. No vacancy shall be filled by appointment.".

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: I will withdraw that amendment.

CHAIRMAN VAN DUSEN: Mr. Higgs withdraws his amendment. Are there further amendments to section a?

SECRETARY CHASE: Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie offer the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices, to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

All primary elections and elections of justices of the supreme court shall be nonpartisan. There are hereby established 7 judicial districts, constituted as follows:

Judicial district 1, comprising Wayne county.

Judicial districts 2 to 7, inclusive, comprising all other counties of the state, shall be established by the legislature by joining together contiguous judicial circuits into a judicial district comprising as nearly as possible 1/9 of the population of the state. The districts so established may be changed from time to time by law to the end that each such district shall comprise as nearly as possible 1/9 of the population of the state. No such change shall have the effect of removing a justice from office.

There shall be nominated and elected 3 justices from judicial district 1, and 1 justice from each of the judicial districts 2 to 7, inclusive.

Except as in this constitution otherwise provided, all primary election and election laws, including laws pertaining to partisan primaries and elections, shall, so far as applicable, govern nominating procedures, primary elections, and elections hereunder.

All justices of the supreme court holding office on the date this constitution shall become effective, shall serve out the term for which they shall have heretofore been elected or appointed.

Any justice holding office on the date this constitution shall become effective, who is not otherwise disqualified for reelection, may be a candidate for reelection in any district without regard to his place of residence.

Any candidate for election as justice of the supreme court who is not holding office on the date this constitution shall become effective, may be a resident of the judicial district from which he is a candidate, or may become a candidate in any other judicial district.

Transition from the present established law for the election of justices of the supreme court to the method herein provided shall be provided by law, including the order of rotation in which elections shall be made from each of the foregoing judicial districts.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Judge Dehnke, Messrs. Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie.

MR. NORD: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Dr. Nord, state your point.

MR. NORD: It appears to me, Mr. Chairman, that we have already determined the issue which is now being presented to us. This afternoon we voted to have a statewide ballot. We are now faced with an issue which says we should not have a statewide ballot, but a ballot broken down into districts. I also would like to point out that we reconsidered that question, and it could not be presented to us now even in the form of a motion to reconsider. Therefore I suggest, and request a ruling from the Chair, that the amendment which is now being presented is out of order.

CHAIRMAN VAN DUSEN: The Chair will rule, Dr. Nord, that the amendment is in order. It contemplates a different method of selecting supreme court justices than any which we have acted upon heretofore; though it is similar in nature to the proposal of the committee which was rejected some 2 weeks ago.

MR. NORD: Mr. Chairman, I believe I have not made my point clear. The point I make is this: that what we have adopted this afternoon is a statewide ballot. That point is decided, as far as I understand. We cannot change that at this

point. But the amendment that is now before us would present something which is not a statewide ballot, but the reverse; a ballot in districts. That being the case, I can't understand, as the saying goes, how we can have both at the same time. Is my point understood?

CHAIRMAN VAN DUSEN: Your point is understood, Dr. Nord. We could not have both at the same time. The amendment which is offered by Judge Dehnke and others would strike out the plan which was adopted this afternoon and would substitute a different plan. The merit of the plan, of course, is for the committee of the whole to determine. The Chair would rule that the amendment is in order.

MR. NORD: Mr. Chairman, I appeal the ruling of the Chair.

CHAIRMAN VAN DUSEN: Mr. Lesinski.

MR. LESINSKI: Mr. Chairman, I would like to find out the merits of the plan. Could I have a copy of the full amendment, and possibly all the other delegates, so that we can evaluate this intelligently?

CHAIRMAN VAN DUSEN: The Chair is sure, Mr. Lesinski, that the secretary will see that the delegates have a copy of it. It is being projected on the walls.

MR. LESINSKI: When it was read it sounded like 2 pages, and you have a few paragraphs there.

CHAIRMAN VAN DUSEN: The question, Mr. Lesinski, at the moment is: shall the judgment of the Chair with respect to the point of order made by Dr. Nord stand as the judgment of the committee? Those who are in favor of sustaining the decision of the Chair will say aye. Those opposed will say no.

The decision of the Chair is sustained. Now, Mr. Lesinski, the secretary will, the Chair is sure, make an effort to provide copies of the amendment which is currently before us. Mr. Lesinski, the secretary suggests that it would be possible to project one page on one side of the hall and one on the other, if that would be helpful to you.

MR. LESINSKI: I would like to see the whole story instead of half the story.

CHAIRMAN VAN DUSEN: Mr. Garvin.

MR. GARVIN: Do I understand now that the ruling of the Chair this afternoon, when it was stated, "The supreme court shall consist of 9 justices to be elected to 10 year terms on a nonpartisan statewide ballot," that was divided, and it was my understanding at the time that that was part of whatever was to come after that, because it was voted on by this committee—do I understand now that the ruling of the Chair differs from this afternoon?

CHAIRMAN VAN DUSEN: No, Mr. Garvin. The Chair believes that the ruling with respect to points of order made this afternoon and the point made this evening are consistent. The current amendment is a complete substitute for section a. The committee of the whole adopted this afternoon a substitute for section a. It is now proposed that the committee of the whole adopt a different substitute for section a. The current amendment is in order.

MR. GARVIN: Then this is a substitute for the entire section?

CHAIRMAN VAN DUSEN: For the entire section, that is correct. Mr. Lesinski, the secretary advises that there will be 100 copies available within a matter of 15 minutes. The Chair is confident the debate may take long enough so that within the period before you are called upon to vote upon it you will have it before you.

MR. LESINSKI: You say there are 100 copies. There are 144 delegates. If we are going to vote on something that no one reads, just says aye on it, how can you vote intelligently?

CHAIRMAN VAN DUSEN: Mr. Lesinski, copies will be made available, the secretary advises for all of the delegates. Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I move that the committee recess until the copies are available.

CHAIRMAN VAN DUSEN: Mr. Barthwell, as it happens, a recess is not in order in committee of the whole; a point which Senator Hutchinson made prudently.

The Chair would suggest that the proponents of the amendment proceed to discuss it while the first page is being projected on the wall. The Chair will advise all of the delegates that the question will not be put with respect to this amendment until copies are available for all of the delegates, and all of the delegates have had an opportunity to read the amendment. Mr. Powell.

MR. POWELL: I was about to suggest that the secretary might now reread the amendment, and that the portion being read might be up here so we could watch it as the words are read. When it was read the first time I was trying to follow along in the printed material to see where these various ideas came from, and I don't know whether this was on the wall or not at that time. But it is available now, and our projection machines are working splendidly, and I thought if we could have it read as we watched it there, that then we would know quite conclusively just what the amendment is.

CHAIRMAN VAN DUSEN: Mr. Powell, the Chair thinks your suggestion is a good one, and will ask the secretary to read the amendment once more. Mr. Ford.

MR. FORD: It might simplify things, and I move that we divide the question and consider the first paragraph, which is the same. The only essential change being taking out the statewide nonpartisan aspect and the term of years from the balance of the section, and consider the first section first.

CHAIRMAN VAN DUSEN: Mr. Ford requests that the question be divided, and it will be divided. Mr. Higgs.

MR. HIGGS: Have you ruled?

CHAIRMAN VAN DUSEN: Well, any delegate, Mr. Higgs is entitled to request a division, and a division will be ordered if the question as divided comprehends separate propositions which, in the opinion of the Chair, is the case.

MR. HIGGS: This is precisely the problem. I noted reading rule 51—and I had taken it upon myself to consult with Mr. Chase before the session this evening—that in dividing questions we must be very careful in making such a division and voting in divisions that we don't dig ourselves a pit.

I would question whether a substitute amendment such as the one we are voting upon can be divided in the way comprehended under rule 51 without running into the problem originally raised; that we may find that we want to vote for part of it—that is, we might want to vote for the total plan without being compelled to vote individually, because it is a component whole. If you vote upon it in parts, we may find ourselves in difficulty. I had this feeling, myself. For instance—and I am raising this question—I may choose to vote in favor of a nonpartisan election, but this is conditioned that it be by districts, and I find it impossible to divide this type of a question and vote intelligently upon it.

I call this to the attention of the Chair because we have had a ruling that this amendment is in order. But if it is divided we will have to face the same—if the question is divided, we will have to face parliamentary rulings again on each division, and inasmuch as the original ruling of the Chair was that this was in order simply because it was a totally new plan I feel that there would be some hazard in dividing it.

CHAIRMAN VAN DUSEN: Mr. Higgs, the Chair is indebted to Mr. Bentley for calling to his attention the last sentence of rule 51, the fact that a motion to strike out and insert shall be deemed indivisible, and the current amendment is to strike out the entire section and to insert a new section. The Chair would therefore advise that the question is indivisible under rule 51. Mr. Faxon.

MR. FAXON: Point of information, Mr. Chairman. Would you advise me as to what is the status of the amendment which we adopted this afternoon, Mr. Hanna's amendment with regard to the same section? I was trying to follow along with what you were saying before, but what is the status of that as far as the committee of the whole is concerned?

CHAIRMAN VAN DUSEN: Currently, Mr. Faxon, the committee of the whole has adopted a substitute for section 1 of Committee Proposal 91 to the effect that the supreme court shall consist of 9 justices to be elected for 10 year terms on

nonpartisan statewide ballot. That is the present posture of section a. It is now proposed by the amendment offered by Judge Dehnke and others to strike out that section and substitute the amendment which is projected on the wall, and which the secretary has read.

MR. FAXON: Well, wouldn't it be necessary, in order to strike it out, to have then a motion to delete that or to reconsider the vote by which that was put in?

CHAIRMAN VAN DUSEN: The amendment offered by Judge Dehnke and others is to amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting the language projected on the wall.

MR. FAXON: Then, we don't take any action upon what we have already acted upon this afternoon?

CHAIRMAN VAN DUSEN: Mr. Faxon, if the committee of the whole would adopt this amendment, it would substitute the proposed new language for the language which was adopted this afternoon. So that the action of the committee would necessarily affect the language which was adopted this afternoon. But no action will be taken independently with respect to that language. Mr. Mahinske.

MR. MAHINSKE: With reference to your current ruling here, the proposition that bothers me about rule 51 is, it seems that we have 2 rules in 1 here. The beginning of rule 51 states that if a motion is made to divide and there is still a substantive proposition left after division, that the question shall be divided, and then it goes on to say that in the event of a motion to strike and insert it is not divisible. I think we have a conflict within a rule here, and our procedure to date has been to divide even on all of our prior substitution and insertion amendments.

CHAIRMAN VAN DUSEN: You are quite right, Mr. Mahinske, that our procedure has been to divide whenever it has been requested, and the Chair had proceeded in that fashion until the last sentence of rule 51 was called to the Chair's attention. The Chair thinks Mr. Bentley's point to the effect that this is a motion to strike out and insert was well taken. The Chair would suggest that perhaps the discussion of this point of order has consumed enough time so that by the time we are through discussing it the entire amendment will be on everyone's desk and Mr. Ford's point will be accomplished.

MR. MAHINSKE: Then the essence of your ruling is that there are no divisions which will be properly entertained on this amendment? It is an all or nothing shot?

CHAIRMAN VAN DUSEN: That appears to be the case, Mr. Mahinske. Mr. Garvin.

MR. GARVIN: Mr. Chairman, would it not be true even under this ruling that the sentence that was adopted by the committee this afternoon, the only time that could come up again would be on second reading? Because it is something definite and concise at this moment, and the only time that that sentence could come again would not be in this first reading but would be on second reading.

CHAIRMAN VAN DUSEN: Mr. Garvin, your point is well taken.

MR. GARVIN: Thank you.

CHAIRMAN VAN DUSEN: That particular sentence could not be offered again in committee of the whole. It could be offered after the committee rises.

MR. GARVIN: I am talking about something to change that sentence.

CHAIRMAN VAN DUSEN: Well, the precise point which you make is not currently before us because the sentence is not currently before us, and the Chair is reluctant to rule on it in advance of it being presented. Mr. Ford.

MR. FORD: Mr. Chairman, I want to withdraw the request to divide the question. As you have already observed, we have probably accomplished our purpose, but I want to make it clear that I disagree with the ruling of the Chair, and I hope we get this cleared up before it occurs again. Because my concept of a motion to strike and insert contemplates striking and inserting a part of something so that you are not in fact voting on a complete substitute. If we set a precedent here that by simply offering a complete substitute for something you can force the convention always to vote on a package deal without any opportunity to divide a question when there are several subjects contained in one amendment even though it be a substitute, then I think we are placing in the hands of the convention a device that would always preclude in the future a division of these questions for intelligent discussion of their various components.

CHAIRMAN VAN DUSEN: Mr. Ford, the Chair would state that your point is well taken, and the question should be given further consideration. It is necessary, as you well know, to rule on these matters as they arise, and the ruling of the Chair was, of necessity, precipitate. But the Chair thinks it is a matter which deserves further study. The question is upon the amendment offered by Judge Dehnke and others to substitute the language which the secretary has read for the present language of section a of Committee Proposal 91. Judge Dehnke, do you desire to be recognized?

MR. DEHNKE: Mr. Chairman, I wonder if these copies have now been supplied to all the delegates.

CHAIRMAN VAN DUSEN: The Chair doesn't believe they have been yet, Judge Dehnke. If there is any portion of it you would like to have read, the secretary will be glad to read it.

MR. DEHNKE: I think I can cover it generally without going into specifics. Briefly, this proposed substitute, Mr. Chairman and delegates, proposes to elect justices of the supreme court from 7 districts, the first one of which shall be composed of Wayne county, and from which 3 justices shall be elected. The balance of the state is to be divided into 6 additional districts by the legislature from time to time, composing as nearly as possible 1/9 of the population of the state in each district. The basis of the amendment briefly is this: this convention seems to realize that the people of Michigan want the justices of the supreme court elected by popular vote, and if that is to be on a statewide basis the candidates are faced with the expense and burden of a statewide campaign.

There are 2 possible alternatives for nomination that have been suggested. One is nomination by political conventions, to which a great deal of objection has been raised. The only other alternative that seems to be in sight is a statewide primary election, and this, we all realize, presents for the average lawyer and judge who might be offered as a candidate for the supreme court an insuperable and impossible obstacle financially and otherwise. To put on a double statewide campaign is out of the question for, I suppose, 99 per cent of the attorneys and judges of the state. The only way such a candidate could maintain a double campaign would be by putting himself under unconscionable obligations to those who might be willing to supply the finances necessary to enable him to put on that kind of a campaign. So the first objection I think we must all recognize to a statewide double campaign is that it bars the door to many judges and candidates who might be considered well qualified for the position. Second, it is unfair to the public; not only unfair to the candidates because few have established a statewide reputation, but unfair to the public because it limits the opportunity of the public to become familiar with the qualified timber for supreme court positions. The other disadvantage is to the public itself, because it is difficult for any lawyer or judge to establish a reputation on a statewide basis, whereas a judge or lawyer, a circuit judge or judge of the court of appeals in any given district could depend upon having a districtwide reputation which might persuade the voters that he is qualified for advancement to the supreme court, which he would not have on a statewide basis.

Briefly, I think this plan solves the problem that is presented by a statewide election, and I think on the whole would be acceptable to the public and work well in Michigan as it has in some other states. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, fellow members of the committee, I first of all regret that the parliamentary situation became clouded and perhaps may affect the judgment of the

delegates on this plan which is now before you. Ten days ago Delegate Nord announced that he was going to bury the district plan, but at this season of the year our thoughts are on the glory and promise of the "resurrection."

For several days you listened to protracted debate, repeating some of the things that the committee on judicial branch heard over a period of months as to possible methods of improving the selection of supreme court justices in the state. Chairman Danhof of the judicial branch committee was quoted in the Detroit News on February 28 as saying that we are finding out what we don't want. This committee early determined that it did not want the Missouri plan by a vote of 25 to 90, or over 3½ to 1. We have also determined that we do not want the governor to appoint the justices of the supreme court with the advice and consent of the senate. This was by a vote of 30 to 95, or a little over 3 to 1. We have over the past 2 weeks determined that when vacancies occur we want merely temporary appointments of retired members of the judiciary until vacancies can be filled by election, and in its editorial of March 9, 1962, the Detroit Free Press strongly endorsed and commended the action we have taken in this matter. We have had this afternoon under consideration some other proposals which did not meet with the concurrence of the majority of the committee.

Now having determined what we do not want, I think we have arrived at the point where it is incumbent upon us to determine what we do want, and I submit that what we all want is to provide the best possible judicial caliber for the high courts, and all courts of the state. I fully respect the strongly held views of Mr. Lawrence and Mrs. Judd and others, who firmly believe that this could only be accomplished by an adoption of the Missouri plan or some adaptation of it. But their views we have rejected. I fully understand the philosophy of those who think that the governor should appoint the members of the court as well as other state officials, but at this point this committee has not agreed with that philosophy, and the appointment with advice and consent has also been rejected.

As one analyzes the votes that we have taken, it would appear that a majority of the delegates to this convention are at this point agreed on certain fundamental principles. First, that our judiciary should be elected. So should they at all levels. Second, that they should be at least elected on nonpartisan ballots, and as to the circuit court and probate court we have at this point determined that they should be nominated as well as elected on a nonpartisan basis. Third, we have determined that vacancies in judicial offices should be filled by interim appointment, and then follow an election to fill a vacancy. We have determined that the incumbency designation is to be earned only by election, and not by appointment to judicial office. And I believe we have determined that the incumbent members of the judiciary should be given the right of self nomination.

Having agreed on these multitudinal ideas, where then are we still at odds on the matter of the election of the justices of our supreme court? Actually the issue is between 3 choices: a maintenance of the status quo with its hybrid inconsistency of partisan nomination and nonpartisan election; a second choice, a provision for statewide nonpartisan primary election; or, finally, the choice that this amendment now presents to you. Our work of the past 2 weeks has reduced our choices from many diverse plans to just these 3, as I see it at this time.

I do not want to repeat the many arguments that have been made on this floor. I merely want to summarize very briefly a few points. It has been said by many of the delegates that the status quo is simply not honest. A candidate cannot be both partisan and nonpartisan. He cannot seek nomination as a member of a political party and then inconsistently present himself with any honesty as a nonpartisan candidate. Second, as Judge Dehnke just pointed out, it has been freely admitted that the expense of statewide nonpartisan primaries and statewide nonpartisan elections would prohibit the candidacy of many capable men whose service the state is thus deprived of. The nonpartisan nomination and election of our justices is consistent. It is in accord with what you have approved for the circuit court and probate court. It reduces the financial obligation of the candidate sufficiently to attract competent men who would otherwise never run in a statewide campaign, first for nomination and then for election. It would provide, I submit, an orderly and a consistent method of truly nonpartisan election in our trial courts, with advancement to the probably to be created court of appeals, and finally, if preferment is given, advancement, still nonpartisan, to the high office of justice of the supreme court.

I ask to you to look again at the journal, pages 467 to 469, and review the detailed arguments advanced in support of the plan when first proposed by the committee on judicial branch; weigh them against the arguments that have been presented during the past several days in support of any other plan. If on the weight of the evidence you cannot agree with the several proponents of this plan, you should vote against it and try to find something better. In months of study the proponents of this proposal have been, in all honesty, unable to find a better solution than the one we have presented.

It is our duty here to improve our constitution and correct such apparent defects as the one we have had under discussion in this prolonged debate. This was the avowed purpose of the league of women voters and members of the junior chamber of commerce and other groups who assisted in bringing about the calling of this convention. This is what the citizens of the state of Michigan expect of us while we are here. This amendment offers you the opportunity to carry out this mandate of the people.

Now, how does this plan differ from the one that was submitted to you in the committee report as it came before you over 2 weeks ago? In the first place, it reinserts in identical language the language of the committee report in place of the language adopted this afternoon providing for statewide nonpartisan election. So in that first paragraph it differs not at all. From that point on it differs in 2 major respects.

It does not spell out the exact counties comprising judicial districts 2 through 7, but leaves it to the legislature to establish the boundaries of these districts and to revise them as population changes may require, to the end that the population in each district, aside from district 1, shall be as nearly as possible equal, having regard to circuit court boundaries. This meets the point raised in earlier debate by Delegate Hatch, who pointed out that by tying the districts to Wayne county and having them either not less than ¼ nor more than ½ of Wayne you might have an artificial standard. That point was well taken, and so this revision has been made in the plan as originally presented to you by the committee. It should be observed in this regard that the circuit court boundaries and zones are established by statute, and so the legislature is given double flexibility. The legislature can change circuit boundaries, they can change the boundaries of the judicial district, but still conforming to circuit court boundaries so that no one circuit would have appeals to a different area. The second major change from the original plan is—and this will appear on page 2 when it is distributed to you, and if not, when it is projected—that this plan as now revised will permit any person to be a candidate from any district regardless of his place of residence. This in the original plan was extended to incumbent members of the court, and now it is extended to all.

One final word, and in this I give you my sincere pledge that it is my view. This amendment is not politically motivated. It was evolved and it was developed over many months by delegates long before they actually were delegates to this convention, and was with the one end in view of how can we best solve this hybrid inconsistency and elect the most competent men best known to the voters to the supreme court of this state. I submit, fellow delegates, that we cannot at this time know or even guess what may be the political result of this plan. This will depend upon the temper and the wisdom of the voters in this state in the years ahead, and who can know today what this may be? I ask you to put aside conjecture as to the present or possible future complexion of the

court, and to vote only your own conviction as to whether, on the basis of pure logic, the arguments, the discussion that you have heard over the weeks, whether in your sound judgment this plan will provide for the supreme court of this state men of the highest obtainable judicial caliber.

CHAIRMAN VAN DUSEN: Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, I would like to address a question either to Judge Dehnke or to Mr. Prettie.

CHAIRMAN VAN DUSEN: If either of the gentlemen cares to answer. To which of them do you prefer to address your question?

MR. W. F. HANNA: I will address it to Mr. Prettie. Mr. Chairman, Mr. Prettie, if I read this amendment correctly, district 1 for all time would be Wayne county. Is that correct?

MR. PRETTIE: That is correct.

MR. W. F. HANNA: And district 1 would for all time elect 3 justices from district 1?

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: That is correct.

MR. W. F. HANNA: This would be true even though Wayne county only comprised 18 per cent of the state population?

MR. PRETTIE: Well, I think this is a fair hypothesis, but it now has over 33 per cent. But if you anticipate a possible atomic bomb, or something of that sort, that remote contingency might arise, but I don't think we should try to look into such a dire future.

MR. W. F. HANNA: Mr. Chairman, I would object to this plan, then, on that basis, because a study of the population trends in Michigan clearly shows that Wayne county will have a smaller and smaller percentage of the total state population, and to give Wayne county 3 supreme court justices without at least 1/3 of the state population would be giving Wayne county entirely too much control of the supreme court of this state over the next 100 years, and I would therefore urge the rejection of this amendment.

CHAIRMAN VAN DUSEN: Mr. Garvin. Mr. Garvin passes. Professor Pollock.

MR. POLLOCK: Mr. Chairman and members of the committee, I deplore the necessity to discuss this matter again after it was soundly defeated once in committee, and I can't understand why it has to be brought up again and hashed over and waste our time. I thought it had been pointed out to be a thoroughly defective plan. It shows, of course, the division in the committee. The committee, being unable to agree upon a forward looking plan, regurgitated their differences to the assembly here, and we have been hiccuping ever since. But once you are beaten it doesn't mean you can't join others in a constructive improvement. Unless we can vote for something which is an improvement over what we've got, we might as well keep what we've got.

As far as I can see, and although Mr. Prettie alleges no political motivations, if the motivations aren't political, they are certainly naive; and if one considers what it means to have 1/3 of the people elect 2/3 of the judges—if that isn't political I don't know what is. In any case, it seems to me that the supreme court, like the governor and the legislature, should represent all the people, and the legislature is divided into districts for the purpose of getting representation from all of the small areas of the state. I haven't found any sound argument that said that the supreme court had to represent the different areas of the state, and represent them in the same way in which a circuit judge is supposed to represent his circuit. It seems to me the same idea which I have heard some delegates talk about—my circuit court and my circuit judges, as if I put him in there, he is to represent me—it almost seems as if the same idea is to be carried over to the supreme court. I think, therefore, ladies and gentlemen, that this plan having been proved to be defective should be voted down and voted down this time so soundly that it won't be brought up the third time.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, my point was somewhat covered by Mr. Hanna so I won't belabor it, but just point out a few statistics. In the decade from 1940 to 1950 Macomb county enjoyed a 71.8 per cent increase in population; 1950 to 1960, 119.4. My county of Oakland during the '40s increased 45.9 per cent, and during the '50s, 74.3. During this period Wayne county was increasing during the '40s 20.8, and during the '50s 9.5 per cent. Now I don't think this thing is politically motivated by the Wayne county delegates. It doesn't appear to be the case, anyway. But certainly they would be one group which would stand to benefit by any such a device as would present in the constitution 3 supreme court justices from that county, which obviously it not growing as fast as many of the other counties in the southeastern part of the state. For that reason, I would have to be opposed to it.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Delegates will be pleased to know that Mr. Hanna and Mr. Pollock have said almost everything I have to say. Dr. Pollock; excuse me. It is seldom that I get an opportunity to agree with both of these eminent social scientists simultaneously. However, there is one additional fact, and this is the one that Ken, Mr. Prettie, talked about, on page 2. He indicated, and I think perhaps he misspoke himself, that any person running for the supreme court can run in any district regardless of his residence, and as I read it only the present incumbents, or the incumbents at the time that the constitution takes effect would have this privilege. In examining this we also find that the judicial districts for the supreme court are tied to the judicial circuits, which indicates that circuit lines could not be broken in establishing the districts 2 through 7 in the first instance, and thereafter on a reapportionment.

I think that the one thing that members of the reapportionment committee or the committee that dealt with the reapportionment or apportionment of the legislature, did agree on, if my information is correct, it was unfair and somewhat naive to expect a body to reapportion itself. This is what Mr. Prettie's plan does by indirection, because Committee Proposal 93, section a, would have provided that the number of judges may be changed and circuits may be created, altered and discontinued by law, and the number of judges shall be changed and the circuits shall be created, altered, discontinued on the recommendation of the supreme court to reflect changes in the judicial business. So the upshot of this would be that the supreme court would be placed in the rather indelicate position of recommending to the legislature the composition of the judicial circuits which in the end would determine the composition of the supreme court districts. So we are on the one hand agreeing that it is not right to ask a body to reapportion itself, and then coming around in the judicial article and asking the supreme court in the future to recommend the manner in which the districts for the election of its judges shall be established.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I, through the Chair, direct a question or two to Dr. Pollock?

CHAIRMAN VAN DUSEN: You may if the gentleman cares to answer, Judge Leibrand.

MR. LEIBRAND: Dr. Pollock, you spoke about the district plan having been soundly defeated in this committee of the whole. Has it ever been directly presented to the committee of the whole? I have been absent on a few occasions.

MR. POLLOCK: Yes. I voted against it once. I can't remember the exact date, but it was fairly decisive.

MR. LEIBRAND: Was not your vote for the Ford amendment which would have deleted section g of the committee proposal?

MR. POLLOCK: What was the Ford amendment?

MR. LEIBRAND: That is what I believe you voted on, Doctor, in getting the district plan off the floor.

MR. POLLOCK: I beg your pardon. I didn't happen to be here to vote for the Ford plan.

MR. LEIBRAND: May I continue, Mr. Chairman?

CHAIRMAN VAN DUSEN: You may.

MR. LEIBRAND: Perhaps I am confused here.

MR. POLLOCK: I think you are.

MR. LEIBRAND: Well, I will say to this committee, I will give you my thoughts on this. To my memory, and I have been in this convention every day except 3 since it started, the district plan has never directly reached the floor of this convention for a vote. It was deleted from consideration on February 27, 1962, by an affirmative vote on the Ford amendment, which directly deleted this portion of the committee report. Dr. Pollock has stated it was soundly defeated. Even on this indirect defeat the vote was 69 for the Ford amendment and 58 against it, according to my records. A change of 6 votes would have entirely changed the status of the district plan. For the first time tonight, in my memory of this convention, we are faced directly with the merits or lack of merits of the district plan.

I further would like to direct one more question to Dr. Pollock. He stated that under the district plan 1/3 of the people would elect 2/3 of the judges. I never got very good marks in mathematics, but I can't get such a result from the language of the Dehnke amendment, and if any delegate can prove the truth of that language to me I would be very happy to accept it.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: Mr. Chairman and Judge Leibrand, I haven't had the time, of course, to figure this up in the new language which has been presented, but I made a careful analysis of the original proposal, and I shall be glad to show my analysis to the judge, if he would like to have it. I, too, am not too good at arithmetic and this was an approximation, but the point, regardless of whether it is 1/3 or what it is, it shows that the great majority of the people of the state would elect 1/3 of the judges, and the smaller minority of the state would elect 2/3 of them. The main thing is, regardless of whether it is a majority or a minority, it is having judges elected by a portion of the people instead of being elected by all of the people whom the judges are supposed to represent.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, members of the committee, I have listened to this in the committee, as I have stated before, when we discussed this section in the article, and again I want to emphasize the fact that the committee never did agree as a majority committee on this plan that the committee reported out. We did compromise to bring it out, but I listened to Mr. Prettie, whom I have a great deal of respect and admiration for, very attentively in the committee. I have listened to him on the floor, and if ever he made a point that would have been inclined to have me favor this plan, I think he has contradicted it now. His strongest point so far as I have been concerned has been the fact that in the smaller area more people would know the candidates. But now when he states on page 2 in the second and third paragraphs that both incumbent and a new candidate can run in whatever district he wants to regardless of where he lives in the state, I don't see, to save my soul, how he is going to contend that this candidate is going to be better known by the people in a specific district in which he might choose to run.

So, again I don't think this plan offers any improvement over our present system, and therefore I still urge that the committee delegates vote against this plan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Powell, the Chair would advise there are about 5 speakers ahead of you. Dr. Nord.

MR. NORD: Mr. Chairman, Mr. Prettie in opening the debate — not opening it, but near the beginning of the debate, said this is a district plan which I had said we should bury, and at least we had tentatively buried. If that is the case, I assume it is the same plan as was before us once before. At the same time I heard Judge Leibrand saying that it isn't. I think we should face up to the fact that it basically is the same plan. There are enough differences, apparently, to avoid the point of order which I otherwise would make, that this has been considered and defeated. It has been buried once, and I believe that it deserves a decent burial, and I resent the idea that it is turning around in its grave and walking the floors of this hall. It is a zombie, in other words. It is a dead thing which doesn't know it. I think we should make it clear that it is dead and should be buried once and for all. As to the merits of this particular subject, Mr. Bill Hanna hit one of the points on the head right at the beginning, near the beginning of the debate, when he said under this plan that should Wayne county have 18 per cent of the population, or whatever the number, they would always have 1/3 of the supreme court judges. It may be that Wayne county may have more than 33 per cent some day in the future; it may be that they may have less. On the basis of the present trend we expect they will have less. I will go on the assumption that they will have less. Within the next 50 years quite possibly they will have only 20 per cent or 18 per cent. Now, suppose that is the case; the plan that we have before us says that forever there shall be 3 supreme court judges from Wayne county, and I would like to state, as I did the last time this plan was before us, we don't want them. We don't want 3 judges from any one particular place just because there is a line on the map saying, inside this is Wayne county. If you would give us 9 out of 9 we wouldn't want it. We don't want anything. We only want justice; not justice for Wayne county, but we want justice for all the people, and if you are giving us too much, for Pete's sake take it back. I won't tell you what to do with it, but don't give it to us. We don't want more than we are entitled to, and we don't want to be measured as to exactly how many judges we are entitled to. We are not entitled to any judges. The whole people of the state are entitled to a good supreme court.

Therefore I agree 100 per cent with Mr. Bill Hanna's analysis of the apportionment feature of this plan. There are other apportionment features of this plan which cause trouble, too. One of the main troubles with this plan is this: the legislature will have to set up the districts, and it is also stated that later on it is expected that they will reapportion the districts in order to keep the population as nearly equal as it may be. I would like to call your attention to remarks made by one of the sponsors of the original districting plan, Judge Leibrand, on Friday when Mr. Kuhn's amendment was before us. Mr. Kuhn's amendment said if the legislature sees fit, it can adopt districts for the supreme court. Judge Leibrand took the floor and said that it is a bunch of nonsense. In fact, he said the legislature can't even set up one congressional district. He said that if they can't set up 1 district, how are they going to set up all of the districts? How are they going to set up all of the districts for the supreme court? He said that it's impossible. I don't know whether it is impossible or not. I believe that it is impossible. But that is the statement of one of the proponents of the original measure who has taken the floor again and urged us to do what he told us on Friday was impossible.

We have other problems with the apportionment feature of this particular provision. It says it shall be as nearly equal as possible; 1/9 as nearly as possible, and that the legislature may—it doesn't even say that they shall reapportion, but only that they may. The last plan that we had said that they shall. This one steps back a little bit because they are afraid they might not do it. These words, "as nearly as possible," are famous words in the convention. In the apportionment committee we had those words before us a number of times. We were told by the majority group on the committee that those words are meaningless; that it is impossible to provide equal population districts by saying as nearly equal as may be. They say that's meaningless. If it is meaningless there, in the apportionment of the legislature, how does it get to be meaningful here? I suggest to you, and I believe it is perfectly obvious, that the apportionment features of this plan are impossible to fulfill, and they are not expected to be fulfilled. They will not be on a population basis at any time. Not only will the Wayne county figure always be the long figure, but there will be nothing to make sure the legislature will make changes, and if the legislature should violate the provisions,

the supreme court will be required to determine whether its own districts are correct. This is certainly an untenable position for the supreme court to be in.

Mr. Prettie has argued on behalf of this plan by saying that everything else is no good; that, therefore, this is good. I don't see that that is a logical position. If everything else is no good, this could be no good, also. We can't be sure that we have eliminated enough when we stop one short of this plan. This plan should be eliminated, too. A plan that we back into by the process of elimination has not very much to recommend it. As Dr. Pollock says, this plan has been regurgitated, and it seems to me that that shows that it is an elimination type of plan.

One of the speakers on behalf of this plan said that a nonpartisan partisan plan, as this is supposed to be, this present plan, a plan that is nonpartisan and yet it is partisan, that that cannot be honest. I assume from what he said in that connection that that means that any person who is willing to go through that plan is dishonest, and that he says to the people—half the time he says he is nonpartisan and the other time he says he is partisan. If that is true, I haven't got a suspicious character, but every one of our supreme court justices is labeled dishonest by that speaker. I believe that is an improper view to take. I pointed out the last time this subject was up that there isn't anything inconsistent, whatever, in having nonpartisan ballots and a partisan campaign. The point is this: if you have a campaign and anybody helps you, anybody helps you with money or assistance of any sort, literature, setting up meetings, you can call him and the group that works with him, you can call him a party if you wish. It just hasn't got the same name. It isn't called a Democratic party, it isn't called a Republican party. It's a party. You can't have an important election without a party of some sort. It just isn't a party that has a label which you dislike. Any campaign is a party campaign of some sort. The only question is, do you know which party, do you know who it is that is behind the candidate. You can't stop important elections from being partisan. All you can do, if you wish to do it, is to take the name of the party off the ballot so that when the people vote that won't influence them. If you wish to do that, there certainly is no objection to it, but let's not kid ourselves and think that it is even possible to have an election of such an important nature to really be nonpartisan, and I see nothing inconsistent with the present system in that respect.

It has also been stated, Mr. Chairman, that this is a nonpartisan plan, but as I pointed out last time, it is basically a guaranteed annual wage for Republican judges. You can't avoid realizing, as many delegates have said, that this plan sets up a supreme court which will be permanently Republican in majority, as far as we can see. It is true that we might have atom bombs, and so on; it is true something might happen; there might be a revolution, and we don't know what, but in the foreseeable future this plan expects to set up a perpetual Republican majority of 6 to 3 or 5 to 4 in the supreme court, and this is done in the name of nonpartisanship. This could be suggested, it could be stated, it could be proven that some of the proponents of the original plan explicitly stated to people who they asked to back it that it was intended to be partisan, and that it was the only way to elect Republican judges to the supreme court. If any delegate challenges that, I would be glad to state the name, not on the floor, because that is against the rule, but off the floor. This is, in the minds of some people who have been in favor of this plan, politically motivated. I realize a lot of people who don't have political motivation have spoken on it, and I know that they don't, but you can't ignore the fact that that is the end result of this plan. It is not a nonpartisan plan, unless you want to call it a Republican nonpartisan plan.

Mr. Chairman, I ask that this amendment be defeated; that we return to the position in debate we were at before the panic bell was rung at 5:15 p.m.

CHAIRMAN VAN DUSEN: Mr. Tubbs.

MR. TUBBS: Mr. Chairman, I think for the first time I will agree with Bill Ford. He made my speech in the first 2 sentences. Then he wandered off a little bit and I kind of lost the thread of his discourse, so I am going to make one additional point and sit down. It is said that this plan is better than the one we now have. I think everybody has agreed, except 2 of the supreme court justices who testified before our committee, that the present plan is not too good, but at least when you get 2 political parties into conventions you have a condensation of the people of this state who can know better about the qualifications of the people who are seeking to be nominated as judges than the million or so voters in the state at large. Now, if you could just condense that further and get it down to a nonpartisan commission who would make the nomination to an appointive power, then you would have something.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, I rise to support the Prettie amendment, although you have on your desk by this time a copy of an amendment to strike out and insert which I will offer if this fails. However, the district plan is my first choice, and I speak so that you will understand that the principal reason why I feel that we either should support the Prettie amendment or ultimately support mine is that if you believe in an elective system and you want an elective system which is truly nonpartisan, then I believe that it must be by district. Only in that way can a candidate offer himself to the electorate without becoming involved in campaign expenses that, according to testimony which was given before our committee, would involve expenditure of $50,000 at a minimum and upwards; only in that way, in running in districts, can we avoid this terrific expense of a statewide nonpartisan election. Otherwise a candidate running statewide may have support, although nonpartisan, but the support will necessarily be either out of his own pocket or out of the pockets of special interest groups. I believe that the district plan for electing supreme court judges is the only truly nonpartisan type of plan that is feasible.

CHAIRMAN VAN DUSEN: Judge Pugsley.

MR. PUGSLEY: Mr. Chairman, fellow delegates, I should feel somewhat embarrassed to appear before you after listening to the remarks of a distinguished member of the University of Michigan faculty who has advised us in very many ways during this convention, if I did not realize that I am not standing alone in the position which I am taking here at this time as 1 of 6 of the has been judges of the state of Michigan. I should also be further embarrassed if I were the only 1 of the 6 who had the nerve to stand before you as an advocate of the district plan. I regret that one of the leaders of the exjurists is in the hospital at Dowagiac today. I hold in my hand a telegram which he sent here from his sick bed. He says, "Auto accident hospitalized Dowagiac. Please tell the delegates I am very much in favor of district plan on nonpartisan nomination and election. Carl D. Mosier." I am sure that we all regret this misfortune has come to Carl, and I am sure that you all join with me in a very high regard for him. He has many friends, and is a distinguished exjurist of the state of Michigan. There are also in this hall today 5 of us, at least, who are of one mind in a belief that the district plan is the most practical and the most feasible of any and all plans that have been suggested.

It has been my pleasure during the years that I served on the circuit bench of this state to hold court throughout the state in more than half of the judicial circuits thereof, and during my experience it has been my pleasure to meet distinguished and outstanding lawyers in every one of these circuits or districts proposed under this plan, and I know from my own acquaintance and from my own experience that there is not a district here that does not have available competent material to sit on the supreme court bench, comparable with any that have occupied that bench within my memory. I say this without fear of contradiction by anyone who has a broader acquaintance among the attorneys of the state of Michigan. But these men, outstanding as they are, are not offering themselves as candidates for the supreme court for the very reasons explained by Judge Dehnke; that they cannot

spend the time, neither can they afford the money that it would take in order to put on a successful campaign without leaving behind them an obligation to someone who may have supported them in the campaign. And we have often times heard it said, and quite properly so, that if there is anyone in public office that should be independent it is the one who occupies a position of trust on any of the benches in the state of Michigan.

I believe, my friends, that this plan is practical, and I believe it will work. I do not share the suggestion that has been made that any one of these candidates, if elected, will go onto the bench with the idea that he is to serve only some part of the state of Michigan. I say that with some feeling, my friends, because I have never, to my knowledge, known of any of the several judges who have served in various parts of the state ever having been accused of serving any particular part of the state at the expense of the state at large. Supreme court justices are selected to interpret the law, and as far as I have been able to interpret it, the law in Oceana county and the law in Wayne are absolutely the same when it comes to principles of law, and I don't believe that anyone that we may select under this plan would be addicted to any other practice than to follow the customs of those who have preceded him.

It has pleased me during this convention to note the respect and satisfaction that has been pledged by fellow colleagues to the circuit judges of the state of Michigan and beyond, and which they have personally accepted for the work they have done. I join, my friends, most heartily in endorsing this plan, and request that the delegates do likewise.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, there are some 5 speakers seeking recognition ahead of you. The Chair will be glad to recognize you in your turn. Mr. Higgs.

MR. HIGGS: Point of information.

CHAIRMAN VAN DUSEN: State your point, Mr. Higgs.

MR. HIGGS: I would like to ask how many alternate plans are on the desk and whether or not we might have a copy of all proposed methods of selecting supreme court justices. I have distributed the ones that I have, but while we are debating, if we could have copies and know the number of other plans available, I think it might be worthwhile.

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to state how many amendments currently are pending to sections g or a.

SECRETARY CHASE: There is this pending amendment. There is one offered by Mr. Higgs and another one on file by Mr. Danhof.

CHAIRMAN VAN DUSEN: If it is possible, Mr. Secretary, will you see to it that copies are made available to all delegates?

SECRETARY CHASE: I would be glad to.

MR. HIGGS: Copies of the Higgs amendment are on the desks, and the only one I don't have a copy of is the Danhof amendment.

CHAIRMAN VAN DUSEN: Mr. Powell.

MR. POWELL: Mr. Chairman and fellow delegates, I hesitate to make this comment because to date I have been getting along very amicably with my esteemed and learned seatmate on my left, Dr. Pollock, but I feel constrained to comment on some of his remarks. He made a statement to the effect that this plan had been repudiated, regurgitated, and a lot of other things, which I didn't feel was at all justified or proven by the facts or by the experiences or by the record. But he did go on to make one statement which I think he proved quite conclusively when he said he was not a very good mathematician. He made a statement to the effect that under this plan some 1/3 of the people would elect 2/3 of the justices. Now, of course, the plan we have before us now is significantly different than the original plan, in that it leaves the districting outstate to the legislature. But if any of you really want to look at the arithmetic of the deal, right here in our journal, on page 467, there is listed what the population of the various districts would have been had the original districting as proposed therein been carried out. I want to submit that the smallest of those districts numerically speaking, district 2, would have had a population of 690,259, while the largest of the districts, district 5, would have had a population of 999,019, which is not significantly larger than the smallest district, and the average of the 3 Wayne county districts would have been 888,776.

This isn't very pertinent to the pending plan, because when we leave it to the legislature they might not follow the exact lines as laid down in the original proposal. But when someone tries to convey the idea that this is way off base and inequitable from the standpoint of the districts and their population, I think we ought to check up on that. Again if any of you want to look at those figures they are on page 467 of the journal.

CHAIRMAN VAN DUSEN: Mr. Powell, would you yield to Dr. Pollock for a response? Mr. Powell yields to Dr. Pollock.

MR. POLLOCK: Mr. Chairman, Mr. Powell, now that you are talking about figures I can use them also, and of course it doesn't bother me too much about the figures. I was giving only approximations, and I must confess to be a little bit irritated that this seems to be treated as merely a matter for lawyers and judges. It happens that the people are interested in the courts, too, but since judges have to come from lawyers, it is interesting, as I pointed out in a letter to Mr. Prettie on February 5, that out of 7,710 practicing law in the state, 4,215 reside in Wayne county. So that this plan would give 1/3 of the seats on the supreme court to approximately 55 per cent of the state's legal population. This is just another way of indicating the inequalities of this plan. Of course, another way, which isn't quite as exact as this, is to assume, as we do with congressional districts that there is one genius in every district. Now if you said a candidate could be a candidate in any district whether he resided in it or not, then, of course, it would be a little bit different. But, although I haven't yet found that in your proposal, it may be there. If you allowed a candidate from outside the district to be a candidate within the district, this would help a little bit.

CHAIRMAN VAN DUSEN: Mr. Powell.

MR. POWELL: I hardly feel that those comments deserve any reply. We aren't trying to work out an arrangement to give a certain percentage of attorneys a job here. We are talking about districts that involve people. I gave you those figures there to show how this arrangement works out. I am sure there are ample numbers of qualified attorneys in the various districts, as far as that is concerned. But again I submit that this wasn't based on any arrangement to try to farm out positions for deserving members of the bar. And when he says this is a matter that has had too much discussion by the attorneys, I am sure that those involved in it right now aren't attorneys. We are speaking on behalf of our constituents and the people generally throughout the state from the layman's point of view.

CHAIRMAN VAN DUSEN: Mr. Stevens.

MR. STEVENS: Mr. Chairman, members of the committee, as a practical matter the district plan merely gives to the people a practice that has been followed for years by the political conventions. These conventions have consistently nominated candidates for the supreme court from areas which had no justices upon the court. This is not to say that these justices are representing the areas from which they now come, nor would it any other way mean that if they were elected by the people they would be elected as representatives in the sense in which members of the legislature represent their constituents. I do not feel that you need to worry about the matter of a member of the supreme court coming from a particular district of the state. Nothing in the history of the court tends to tell us that that makes any difference.

CHAIRMAN VAN DUSEN: Mr. Hubbs.

MR. HUBBS: Mr. Chairman, fellow delegates, I have been listening to this debate for some time now, and I quite agree with Dr. Pollock that this is not a matter that we laymen should stay out of. I would like to ask, first of all, in general what are the objectives of the convention in writing the

judicial article? As far as the supreme court is concerned, we are seeking quality justices who, in the eyes of the people, should not be aligned too closely with political parties, and therefore we have a real tough problem, because in the thinking of some people we have too much politics on the supreme court. As far as I am concerned politics, to me, is not a dirty word. I don't see anything wrong with politics. I like it, and I think politics serve a basic function. I could talk about that for a long time, but I am not going to any more. But I do, however, resent the charge that the judiciary should be above politics. Politics serve a fundamental purpose, and is fundamentally the service of the people of the state.

Dr. Nord charges that this plan is politically motivated. I say that this is not so. I say that this plan is motivated by a desire of some of the people here present to get a supreme court set up that will not be tied to politics, and in their effort to do that they have come up with this district plan which, in my opinion, is not a plan which is going to guarantee representation—not representation—is going to guarantee judicial quality from which the people can understand and know who they are voting for when they vote. The district plan, in my opinion, is merely a mechanical device to get people elected on a basis where they don't have to campaign on a statewide basis, nor be financed by a political party. The district plan is a mechanical device to avoid the burdensome expense of a statewide campaign, and to make it possible for supreme court justices to be elected on a nonpartisan basis. And that is why this plan was developed, to get away from politics, I believe; to suit those people who feel that politics is bad. I think that we should support the district plan.

There is one flaw in it, and I think I know why it is there. The flaw in the district plan is that we didn't set up 9 equal areas with no regard whatever to population, and elect justices from each district and forget population entirely. Then we would have been on solid ground. Then you would say in some of those areas, one of those 9 areas there wouldn't be enough high quality lawyers. I will grant that is true. And so probably the originators of this plan came up with the idea, well. we will divide this up into districts that are equal to a degree on a population basis so that the supply of lawyers would be sufficient to provide quality justices. And I can understand their logic. From my point of view, the weakness that we admit when we did that is the people then began to think we are developing a representative plan in the supreme court, and this is not the truth. We are only trying to develop a plan which will elect quality justices on a nonpartisan basis, and the only way that this can be done is on a district basis so that we can avoid the burdensome expense of a statewide campaign.

I suggest that we support the district plan for these reasons, and very seriously consider changing the thing to cover 9 judicial districts of equal area, and forget population.

CHAIRMAN VAN DUSEN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I would like to ask Mr. Nord a question through the Chair, if I may.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mrs. Butler.

MRS. BUTLER: Mr. Nord stated that this was a political move, and that it would assure the outstate judges as being Republican. I wondered just exactly which districts he was so sure were Republican. I would really like —

CHAIRMAN VAN DUSEN: The gentleman does not care to answer, Mrs. Butler.

MRS. BUTLER: Okay. (laughter)

CHAIRMAN VAN DUSEN: Mr. Norris.

MR. NORRIS: Mr. Chairman, I just want to make a few very brief observations with regard to this matter. I concur with Judge Pugsley that there is no cutover land in the state with regard to judicial timber and that there is comparable material in all sections of the state. I think that we ought to develop, therefore, a statewide approach to the election of supreme court justices.

Much talk has been made here with regard to the program of the judiciary committee. As originally stated, Mr. Prettie began his talk by inviting our attention to the report of the judiciary committee, and one of the reports says that in this district plan "Balance would be maintained in the type of men sitting on the court between all parts of the state", between the type of men. I submit that the question before us is not so much the question of the type of men, but the question of judicial philosophy. What is before us in Mr. Prettie's judgment is an apparent defect. I don't know what defect is apparent to him, but the criticism which I have found that has been assessed by some is that the general trend of decisions of the supreme court as now constituted is not to their liking; it is not to their liking because it has a judicial philosophy which is different from the judgment of others in the state. I submit that the judicial philosophy is what we select when we select judicial officers. Yes, we wish men of the highest caliber; we wish men of competence, of reverence for law, of reverence for American institutions, of government of laws and not of men, of respect of all regardless of race, color and creed. These are vital components of views and of character. But I submit what is also important if we are thinking in terms of the next 50 years is developing the kind of means by which we can select those who exert the judicial power in such a way that it reflects the need for change and make law an instrument of justice, an instrument of adjustment in the collision between men and men and group and group.

I can only recite to you, if I may, not only a judgment of my own, but a judgment of President Theodore Roosevelt in an annual message to congress in 1908, in which he gave this as his philosophy of judicial philosophy:

> The chief lawmakers in our country may be and often are the judges, because they are the final seat of authority. Every time they interpret contracts, property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy, and as such interpretation is fundamental they give direction to all lawmaking. The decisions of the courts on economic and social questions depend upon their economic and social philosophy, and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold to a twentieth century economic and social philosophy, and not to a long outgrown philosophy.
>
> Of course a judge's views on progressive social philosophy are entirely second in importance to his possession of a high and fine character, but it also is true that judges, like executives and legislators, should hold sound views on all the questions of public policy which are of vital interest to the people.

I submit it is this kind of philosophy which we ought to share as a criterion for the development of a judicial article in our state. And I submit, too, that the article which is now in the 1908 constitution as amended is best calculated to produce that kind of judicial philosophy. And the fact is that in the last 10 or 15 years we have been getting that kind of judicial philosophy on the court, and it has been one that has enhanced Michigan's judicial stature throughout the nation, and it has been one which has given heart and hope to our citizens.

I submit that if we are going to have balance in the type of men, what we really need is balance in the type of judicial philosophy, and this judicial philosophy can only be selected by all of the people in all sections of the state voting for all of the judges. And I submit, as that is the principle, it would mean that we have faith in the democratic processes, we have faith in the people to select their judges, the kind of judges who in character and philosophy reflect their own, and by reflecting their own reflect the will of the sovereign people in self governing process. I urge that we defeat this amendment and return to the article as we now have it in the constitution.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, members of the committee, I assure you that I shall not burden you with a long dissertation. I first, however, want to express my appreciation for the remarks made by Judge Pugsley. Those of us who have known him through the years—and there are many of us—have abiding faith both in his integrity and as a fine character both on and off the bench. Having worked with him and the other members of the judiciary committee, I want to say to you that I believe every one of us in the judiciary committee has faith that his presence and work there has been sort of a benediction.

I do want to say, however, that I don't believe that there is a person within the sound of my voice who will deny that he countenances or believes for one moment that the people from his district, that the people from this commonwealth don't have the right and the abiding desire to elect their judges, to vote for their judges. If there is anybody in here that disagrees with me on that, I certainly wish you would hold up your hand. I am going to look around and see. I don't see any hands. Oh, I see one, I believe. I see one.

CHAIRMAN VAN DUSEN: Mr. Bledsoe, the Chair hopes you will complete your sentences promptly and proceed in order.

MR. BLEDSOE: Here is what this district plan amounts to. It means simply this: you go back to your constituents and ask them to disfranchise themselves, suggest that they disfranchise themselves because we have committed ourselves up here in such a way that you will not be able to vote for your supreme court justices throughout the entire state. That is exactly what we are asking. That is the bill of goods we are taking back to our constituents. That is a tremendous inconsistency. I think it ought to be left right there, and Dr. Pollock has a complete answer to this matter. The people want to elect their judges not from the Escanaba district or any other single district, but they want to be able to vote for all of their judges on the supreme court of this state who have the final say over their life, liberty and property if it happens to get entwined into judicial processes. It is just that simple to me, and I think "Judge" Pollock has hit the nail on the head when he said we must not consider this matter just for judges and lawyers, but the people whom we represent here, and whose franchise and sovereignty we hold in the palm of our hands here in the nature of a trust are the first to be considered. And from what I have been able to gather, the people everywhere in Michigan want the right to vote for all of their supreme court judges.

CHAIRMAN VAN DUSEN: Mr. Allen.

MR. ALLEN: Mr. Chairman, I pass.

CHAIRMAN VAN DUSEN: Mr. Allen passes. Mr. Iverson.

MR. IVERSON: Mr. Chairman, members of the committee, I presume it is needless to mention the fact that the district plan has been one of my choices since the beginning of this convention, and I make no excuses for it. I think I told this committee at one time that I had some idea that at one time perhaps an appointive system was the best system. I presume, as most lawyers, I had become discouraged or disgusted with something or other in the practice before the courts, and I presume that had something to do with my feeling at the time. I think you will recall that I said that I abruptly changed my mind, and since that time I have continuously felt that the election of the judges by the people, their being responsible to the people, was the best manner of electing judges. I further felt that they should be elected, if elected at all, on a nonpartisan basis, my feeling being that the courts should be as far removed from politics as possible. And you carry that a step further, and you attempt to determine what is the best method to bring about that situation. Well, of all the plans that I have heard here, or of all the plans that have been discussed over the years, I finally come to the conclusion that the only answer, especially so far as a primary was concerned, if you are going to elect the judges on a nonpartisan basis, the only solution was a district plan, and that is the reason I am one of the sponsors of this plan, and it doesn't make any difference whether I belong to one party or another I am still interested in seeing that we produce the best judiciary that it is possible for us to do.

For a few moments I would like to bring up some of the questions that have been raised by some of the other speakers here. The question, I believe, was asked by Delegate Hanna, and I believe it was posed by someone else, too, that this would freeze into the constitution 3 justices from Wayne county forever. I call your attention to something that has been brought up on this floor before—that Illinois has had a district plan in the election of their supreme court for, I believe, 50 or 100 years, and the only information we could get was that it had worked fine. Now, the only thing that had not changed with the times was perhaps the situation of change of population. The witness before our committee indicated that for years there was 1 justice of the supreme court from Cook county, and the rest of them, 6, I believe, from outstate. They also said that the new judicial article which was being proposed at this time was leaving the supreme court number at the same 7, but proposing 3 for Cook county and the other 4 from outstate. But still they swear by the district plan. They have no idea of changing it. They said it was utterly impossible to nominate anyone—if you wanted the judges elected it was utterly impossible to nominate them on a statewide basis. Therefore they were completely sold on the district plan. The only change they are making was granting in the new article 3 to Cook county and the rest from outstate.

Now I see no insurmountable task even though we suggest in this constitution that there be 3 from Wayne county. Assume for the sake of argument, that Wayne county were blasted off the map—and I hope it doesn't happen until I move out of there—but assume for the sake of argument that it happens. How long do you think it would take a constitutional amendment to correct any injustice that may be brought about by this situation? It may even be possible, if that happened, that the 3 supreme court justices from Wayne county might be involved in the holocaust too.

Now, Delegate Pollock raises a question about—at least refers to this as being similar to apportionment of the legislature. I think Mr. Pollock knows there is no such comparison here. In fact, I see no great difficulty as far as setting up the districts on a judicial circuit basis. In fact, I see no serious problem if the population in the various districts vary from time to time. I submit that presently, and for at least 25, 30 or perhaps 40 years, there have been changes in the population of the various circuit court districts, and yet there is no redistricting as such. It hasn't become necessary. The only thing that becomes necessary is when the case load becomes such that they need to increase the number of judges. I see no problem as far as that matter is concerned. I would like to call your attention, also, to the fact that Mr. Pollock raises the question that this plan bears no relationship to the lawyer population. I hope that before we are through with this debate somebody will call his attention to the fact that his attention was called to an analysis of the lawyer population in the districts as was originally proposed, and by the time you eliminated office lawyers, corporation lawyers, those who were not actually practicing law—and, incidentally, the most of them reside in the Wayne county area or the metropolitan area—that your lawyer population on a district basis was comparatively equal. And I can't pass without saying that I don't think Wayne county or any other district has any monopoly on smart lawyers. I exclude myself from that. But we have seen over the years many lawyers who you and I have concluded should have been on the supreme court, but because of our system of election have never had the opportunity.

Now, Mr. Nord raises the question about this plan being set up—I assume he hesitated short of making the accusation that it would guarantee a Republican court. I expect that perhaps the most of the minority, I hope some of them, might see the light here tonight, but I would assume most of the minority would be opposed to this plan based on that one thought of Mr. Nord's alone, whether it came from him or somebody else, that this plan would be a definite plan to elect Republicans to the court. I submit that those who are not

interested in this plan are not particularly interested in creating a true nonpartisan bench. I submit further that that is exactly what the majority of this state want today. That is one reason, and the main reason, I am for it. I might say further that I am so firm in my conviction that we should have a nonpartisan court—and, as I have said before, I see no other way to do it except through this plan—that I wouldn't hesitate in the least to support a competent Democrat for that bench, and I think there are many lawyers around this room that would say the same thing.

Now Mr. Bledsoe made the statement that the people have an abiding desire to vote for their own judges, and that if you voted for this plan you would be in effect disenfranchising your constituents. Well, if that is what I am doing by voting for it, then I am disenfranchising the people that voted for me. But I say that my people never told me I should vote against this plan, nor did they tell me I should vote for any other plan. I think they relied on my judgment as to what I thought was best as far as setting up this bench was concerned.

I cannot go on without saying something further. Mr. Bledsoe used this argument in our committee, and I think it is rather significant. He praised Judge Pugsley, and I think rightly so, because I think Judge Pugsley, as are the other judges here sitting as delegates, are the respected members, and have been for years, of our bench, and Mr. Bledsoe stated specifically that if a judge were elected on a district basis, such as Judge Pugsley, he would have no hesitancy of saying that he would get a fair deal before Judge Pugsley, and he went on to say how he had tried a number of cases resulting from the Ferguson grand jury when Judge Pugsley sat in Detroit almost constantly for 2 years or thereabouts—a long period of time—and I don't think anybody raised a question at that time that Judge Pugsley was balkanized. And that raises another question. I am rather surprised that when this plan first was brought to the attention of this convention we were immediately accused of balkanizing the court. I wonder why we haven't heard the argument tonight. They must have decided that it was not such a good argument.

Along that line I would like to call the attention of many of the delegates to arguments that have been had on this floor with respect to what certain judges have done in the southern states—federal judges—with respect to civil rights, and it has been said here time and again that if it had not been for the fact that those men were federal judges they would not have advanced on civil rights as far as they had. I submit to you—and I am not arguing for the federal system of appointment of judges, because I am against it—the only reason for the appointment of federal judges was the simple reason given to us by Mr. Winters of the judicature society, which was that there was just no other way to do it. They couldn't elect them nationwide. But what I am trying to say is that regardless of that, will anybody in this room say that a federal judge is not appointed from his own state? Will anybody in this room say that those federal judges did not stand up to their authority, their convictions as a judge of the United States and not of that state when they passed upon some of these serious problems? I submit that if there is any basis for the accusation that there is balkanization in this district plan, then you might as well apply it to the federal court system itself.

Needless to say, I think I have answered most of the things which I wanted to, but I am very serious in this matter. I think that we have arrived at a time when, if the delegates desire very seriously to do what they know the people of this state want—that is, to place their courts strictly on a nonpartisan basis—then this is the way to do it.

CHAIRMAN VAN DUSEN: Mr. Iverson, would you yield to Mr. Ostrow for a question?

MR. IVERSON: Yes.

MR. OSTROW: Mr. Iverson, did I understand you to say that the district plan had worked successfully in Illinois?

MR. IVERSON: That is right.

MR. OSTROW: Would you then disagree with Action Journal 22 of the committee on judicial branch, December 7, 1961, which says:

> Appearing before the committee was Mr. Albert Jenner of Chicago, Illinois, and past president of the bar association, who commented on the court structure and judicial selection system of the state of Illinois. He made the following points:
>
> 1. The present court system of the state of Illinois, and in particular Cook county, is completely unworkable and has caused a breakdown in the judicial system in Cook county.

Then it goes on to say that in November, 1962, they are presenting a new judicial article which will provide for 4 judicial districts with 3 supreme court justices being elected from Cook county instead of the one that is now being elected from there.

MR. IVERSON: That is exactly what I said, Mr. Ostrow, and I agree with you entirely. He stated that the Cook county court setup was a monstrosity in effect, and that is the very thing which we have already done to prohibit any such a thing as happened there. I suggest that you have—I believe Mr. Prettie has at his fingertips—the testimony of Mr. Jenner in response, I believe, to questions asked by myself, and if you find that he said anything different than I did with respect to the supreme court I will apologize to you.

MR. OSTROW: I don't want your apology. I just want to get this straightened out. Didn't he at the same time say for years and years they were unable to get more than 1 supreme court justice provided for from Cook county because of the influence of the rural areas in the legislature?

MR. IVERSON: I think that is right, but they have got it now in this judicial article.

MR. OSTROW: You mean they are going to get it if the people approve it in November, 1962?

MR. IVERSON: I don't know why they wouldn't approve it if Cook county has 68 per cent of the population.

MR. OSTROW: Well, I mean, just for the sake of accuracy, they haven't got it. They are going to vote on it November, 1962.

MR. IVERSON: I would like the opportunity of furnishing that testimony to Mr. Ostrow, because it was as I suggest.

CHAIRMAN VAN DUSEN: Mr. Lesinski.

MR. LESINSKI: As a layman I would like to say a few words. The district plan refers to judicial circuits. Perhaps the movers of this amendment could supply charts showing the population of the judicial circuits and locations so we can see how this gerrymandering can be accomplished. Now I do have a districting plan coming up in another article to which I hope to receive the same argument in its support.

CHAIRMAN VAN DUSEN: Mr. McAllister.

MR. McALLISTER: Mr. Chairman, fellow delegates, most of the delegates of both political parties have expressed their desire to have the people elect their officials. We have passed an amendment allowing the people to fill the vacancies in judicial offices by their votes. It is my opinion this is one of the finest things that we have done, and it is very popular with the people.

The supreme court justices who appeared before our committee complained about the time required and the cost of campaigning statewide for the offices they hold. The claim of many is that the people are not acquainted with the candidates that they vote for. All complaints are solved by the district plan proposed. The cost of campaigning will be within the finances of the candidate. The people will know and have the opportunity to meet their candidate. Each area in the state will be represented on the court so that someone who has complete knowledge will be present when the case is decided in the area involved. The people in the state will have a greater knowledge of and interest in the supreme court. There will never be a possibility of having all justices from one area of the state. The court will be completely separated from political considerations. If there is not a candidate from the area acceptable to the people, any candidate running can run

in that area where there is not a suitable candidate. If the justice does not conduct himself properly he can be more easily disposed of. One third of the people will elect 2/3 of the justices, and the remaining 2/3 will elect the remainder. Anything we can do here to give the people a greater part in the government of Michigan will make our government better and more secure. I recommend the adoption of the amendment.

CHAIRMAN VAN DUSEN: Mr. Blandford.

MR. BLANDFORD: Mr. Chairman, fellow delegates, I feel that the real merit of the districting plan has not been covered this evening. In my humble judgment the district plan for the supreme court is a mere enlargement of the district plan which is now in effect for circuit courts and proposed for the appellate courts. Practically speaking, I can visualize deserving and qualified circuit judges moving up to the appellate court and finally to the supreme court. I like this movement up through the ranks. I feel that it insures qualified supreme court justices. It will insure, in my judgment, the election to the supreme court of judges who have had circuit and appellate court experience. This is not true today under our present system. In my judgment the district will assure the people of Michigan of the best qualified and experienced supreme court possible. Our supreme court for the first time will be composed of judges, not politicians. On this basis I heartily support the district plan.

CHAIRMAN VAN DUSEN: Mr. Hodges.

MR. HODGES: I don't want to disappoint Mr. Iverson, so I will make the charge that the court is being balkanized so we can get that out of the way. Mr. Iverson raised the point, which is probably not pertinent here, of the federal judiciary in the south and their courageous stand on civil rights, and the fact that if they were elected they probably couldn't have done this. However, I think Mr. Downs laid this argument to rest when he said this depends on everybody having the right to vote. Now, it seems to me that if we just take this field of civil rights for an example and relate it to Michigan, and see what would happen with a balkanized malapportioned court, it might result in the same thing we have in the state legislature, where for the past 10 years a malapportioned legislature hasn't seen fit to pass any meaningful civil rights legislation, and I think this might be projected in the views of the supreme court if—

MR. LUNDGREN: Point of order, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Lundgren, the Chair believes your point of order is well taken. However, the Chair has allowed considerable latitude on the part of prior speakers. Mr. Hodges, the Chair trusts you will—

MR. HODGES: Mr. Chairman, I am trying to relate the question of a court set up on districts, and the only thing we have comparable is the state legislature, and I am just pointing this out as an example in saying I think the best type of court for all kinds is where all votes count equally and can be brought to bear on the court. I think that anything less than this allows more pressure from one side or one group than another set of voters, and I think we would be remiss in our duty if we allowed the court to be subjected to minority pressure of this sort. Therefore I speak against the plan.

CHAIRMAN VAN DUSEN: Mr. Bledsoe. Mr. Bledsoe passes. Mr. Iverson.

MR. IVERSON: Mr. Chairman and fellow delegates, in answer to Mr. Ostrow I would like to just read a few excerpts from the testimony of this witness referred to:

Question. Do you find that the election of the supreme court justices on this district basis has any tendency to polarize or balkanize those judges in their thoughts on the supreme bench?

Answer. No, and I can say this after 31 years of practicing law—and I am a litigation lawyer, and I am up in that court all the time. I suspect that I have briefed and argued at least 150 cases in that Supreme Court of Illinois—it has not balkanized those judges at all. One would think it might, but what happens is this: for example, Judge Bristo in our third circuit died about 4 weeks ago, and the governor has called a convention for the selection of a judge to succeed Judge Bristo in that circuit. That circuit runs from the Wabash river across—about dead center in Illinois—all the way across to the Mississippi river, or to the other side of the state; in any event, through our state capitol, Sangamon county, and so forth.

The judge from that circuit, from that district has been, I think—this will have to go back to certainly before my time—has always been from some small county in that circuit. The 2 large counties are Sangamon and Macon on the western end of the circuit, and they just have not insisted, really. They could dominate the convention pretty well, but they have always selected a fine judge, and that is a fairly evenly balanced district. Sometimes it is a Democrat and sometimes a Republican.

Now, another question:

Question. Do you find that the election of these justices of the supreme court on a district basis has a tendency to encourage better lawyers to run for the office?

Answer. Very much so. For the reasons—first, let us take campaign expenses. In this day and age, campaigning through the state of Illinois is really a tough job and, for a judge to really campaign throughout the state of Illinois for judge of the supreme court, it costs a minimum of $45,000 to $50,000, an absolute minimum. You cannot do anything in the state of Illinois in a campaign. It will run at least $50,000.

Let us say that Judge House—who is now the baron House, who is the judge from Nashville county from down near the Ohio and Mississippi river—he runs. He gets up to Chicago, he gets up to the northwestern part of the state, up around Galena where General Grant was born. The people up there do not know who Judge House is from a bale of hay, and we in Cook county—except some of us lawyers who keep alert on that sort of thing—they would not know; but they know who Judge House is down in the first district, which is the southern "little Egypt;" what we call "little Egypt" in Illinois.

So that has a tendency to bring out in that area, and it is a pretty good population, a good man.

That is an example of what the testimony of this man from Illinois was.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, I think it must be apparent to all the delegates here that the big problem is that there isn't any good way to select a justice of the supreme court, lacking Divine intervention, anyway. However, it seems to me that the best prospect we have here is to do the same thing we do in just about every other field of human endeavor, to try to find a well qualified man who has demonstrated his competence as a judge and attempt to promote him. That is what we follow in industry, in the school system and about everything else. If we can achieve a system which does that, and can guarantee that the justices of our supreme court will have judicial experience, we will have accomplished a great deal that the people of the state can thank us for. No plan actually in existence now, other than some sort of district plan, can accomplish that. Any time an appointment is made by an executive officer, the chief executive officer, his attention must be directed to the good that it might do his candidacy or his party. We have even seen that in the federal system where 2 judges that I think all lawyers look on with reverence, Judges Augustus Hand and Learned Hand—probably recognized by all lawyers as being the oustanding judges in the country—never were appointed to the United States supreme court, and never had a chance to be appointed to the United States supreme court. They simply were not political figures.

Here in this plan, it seems to me, are the best opportunities we have for the people of these districts to recognize a competent circuit judge and to provide for his promotion first in this intermediate court of appeals and then to the supreme court, if he demonstrates his competence there.

If this were a matter of trying to represent areas of the state, as Mr. Hodges would suggest, I am afraid I would have to be against it. If anyone will take a pencil and figure out what they say in this amendment, you will find that all of Michigan north of Bay City, which is approximately 3/4 of it, would constitute 1 judicial district. Well, I am from that area, and if I didn't believe that this plan had merit in securing to us a far better judiciary than any other plan that we might come up with I couldn't possibly back the plan. I think it is far less political than any other plan that we might hope to adopt, and that it will secure the best possible judicial talent.

In answer to Mr. Hanna, I find I must disagree with him. The idea of giving away 3 justices is only borne out by historical fact. Since 1910 Wayne county's percentage of the population of this state has run as follows: in 1920, 33 per cent; in 1930, 39 per cent; in 1940, 38 per cent; in 1950, 38 per cent; and in 1960, 34 per cent. Thirty-four per cent of the people live in Wayne county, will elect 1/3 of the justices of the supreme court. We can't get any closer. Sixty-six per cent of the people, the balance of the state, will elect 2/3 of the supreme court. Again we can't possibly get any closer. The great merit of the plan, however, is not particularly this matter of population, but simply the matter of the promotion of able, qualified and competent judges. I invite your attention to the judicial experience of the present supreme court.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie. Does any delegate desire to have the amendment read again? If not, those in favor of the amendment will say aye. Those opposed will say no.

The Chair is in doubt. Those in favor of the amendment will vote aye. Those opposed will vote no. The question is on the amendment offered by Messrs. Dehnke, Iverson, Hoxie, McAllister, Rood, Pugsley and Prettie. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment the yeas are 62; the nays are 64.

CHAIRMAN VAN DUSEN: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Higgs offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices, to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

Justices of the supreme court shall be elected at statewide partisan elections. Incumbent justices of the supreme court may become candidates for reelection by filing a declaration of intention as provided by law. Other candidates may be nominated by state party conventions or by petition as provided by law. No candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention. Persons nominated at party conventions shall be listed on the ballot under the party name and label of the party nominating them. Incumbents filing a declaration of intention shall be listed on the ballot under the party name and label of the party originally nominating them. Persons nominated by petition shall be listed on the ballot under no party name or label. No vacancy shall be filled by appointment.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs. Do you desire recognition, Mr. Higgs?

MR. HIGGS: Mr. Chairman and fellow delegates, you have a copy of this amendment on your desks, and I would like to call your attention to the 5 basic objectives that are sought to be accomplished by this amendment. First of all, it seeks to reinstate the language of the original committee proposal that the supreme court consist of 9 justices to be elected for 8 year terms. I think the amendment that we had adopted providing for 10 year terms is somewhat long, if you will bear in mind that we have an original proposal that permits a judge to run for office providing he is not 70 years of age. As the term gets longer it becomes permissible for a judge to sit on the supreme court that much longer. He could be 80 years old rather than 78. I think an 8 year term is long enough.

I would like to bring to the supreme court a truly elective system. This would be best accomplished by removing the incumbency designation and removing the appointive feature. As we all know, we do not have an elective supreme court. Of the 8 justices on the supreme court, 5 were placed there originally by appointment directly to the supreme court and a sixth began his judicial career by appointment. We have defeated a plan that I think would permit an elective system, nonpartisan by districts. We have seen objections raised as to the cost of campaigning statewide, and that if we want a truly elective system, nonpartisan, we would have to go to districts. But this has been defeated at the moment, and I believe that if we are going to have an elective system which is consistent we must go to a partisan election. And this, I think, is one of the most significant aspects of this particular amendment which is before you.

I propose that the judges be elected at statewide partisan elections. One of the greatest criticisms that we have heard through the years has been the criticism that candidates who are selected by partisan nomination are then expected to take a bath, cleanse themselves of partisan relationships and then run statewide nonpartisan. This is basically a fraud on our people. They go to the polling place, and they are expected to vote in a contest which allegedly is nonpartisan, but which we all know is truly a partisan race. Let us reconcile this inconsistency. I would like to reconcile it in favor of a nonpartisan nomination, but if we are going to have a nonpartisan election we just can't do it statewide at any reasonable kind of expense and without special interest groups financing the candidate, and unless he has a lot of money of his own. I think if we want a truly elective system we must remove the incumbency designation and, in lieu thereof, place the partisan label.

Fourth, one of the problems even in the system that we have today, which is allegedly nonpartisan, is the fact that the candidate, if he wants to be renominated, must go back to the party convention in order to run again. While he is on the bench, allegedly he is a nonpartisan. However, he must bear renomination in mind throughout his tenure—throughout the period that he sits on the bench—in making judicial decisions, many of which decisions are truly decisions which involve basic philosophy and policy, and some of which have been at least interpreted as partisan.

It has the appearance—at least in the minds of the people, I think—that judges who are sitting on the bench must keep in mind that they have got to go back to the party to run for office again. It just isn't consistent. If we can't resolve this inconsistency by making both the nomination and the election nonpartisan, then I suggest to you the only honest way to do it is to resolve the inconsistency by making both the nomination and the election partisan.

But my plan has another feature that I think is unique. While I would require that the candidate carry the partisan label, if the candidate nominated by his party is successful and is elected to office, then I would remove the partisan obligation by permitting him to renominate himself by affidavit and run again. In this way, I think we would combine the best features of the partisan type of election and the nonpartisan type. We would, I think, be requiring the candidate to run under the label of his party; we would, I think, provide a truly honest identification; but we would also permit this candidate, if elected, to be in a position where he can exercise his office with a spirit of independence; because once he is there it is only up to him to say whether or not he shall run again. I think that this has an advantage over any appointive plan in that in any appointive plan he runs simply on his record. Here he at least must face the electorate, and he must face a live candidate, and he must actively run, and I think that that is a worthwhile and sound proposition. Now, by making it a truly partisan election, this will permit candi-

dates, regardless of wealth, to run in a statewide election without becoming involved either in a tremendous personal expense—as you have heard, it could run into maybe $45,000, $50,000 and upwards. It will also permit him to be independent of any support of any special groups unidentified which might contribute to his campaign in various ways.

I would urge that you give my amendment serious consideration. This is advanced most seriously. I do not see any reason to fill the vacancies by appointment. If we have 9 justices on the supreme court and a vacancy occurs, I don't know really why that court cannot operate with 8 justices until the next election inasmuch as the court is now operating with 8 justices, and, in addition to having 8 justices, at that time they will also be assisted because they will have an intermediate court of appeals if the committee proposal is adopted. I think that you have heard most all of the arguments both ways in both of these plans. It is not an easy question for any of us to answer. There probably isn't any perfect way of doing this, but let us at least remove this hypocritical type of approach where we nominate by party and we run nonpartisan. I think that the public will accept a truly partisan election, and in a much better spirit than they will if we continue basically the same type of selective process that we now have. Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment to section a of Committee Proposal 91 offered by Mr. Higgs. Those who are in favor of the amendment will say aye. Those opposed will say no.

The amendment is not adopted. Are there further amendments to section a of Committee Proposal 91?

SECRETARY CHASE: Mr. Danhof offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee—

MR. WOOLFENDEN: Point of information, Mr. Chairman.

CHAIRMAN VAN DUSEN: State your point, Mr. Woolfenden.

MR. WOOLFENDEN: Are copies of this amendment in the hands of the delegation?

CHAIRMAN VAN DUSEN: The Chair believes they are, Mr. Woolfenden. You may proceed, Mr. Danhof.

MR. DANHOF: Mr. Chairman, members of the committee, we have had numerous votes which seem to demonstrate that we are probably not going to depart too greatly from the present procedure. I submit to you that the first 2 sentences here are basically of the committee proposal, section a. The remainder you may have viewed in essence this afternoon when we considered the amendment by Mr. Hanna. There have been some changes thereto in language and in shortening of the section. In essence it provides for 9 justices on a nonpartisan ballot. It provides that they may be nominated by party, an incumbent may file an affidavit for reelection, and any other individual who is otherwise qualified may become a candidate by filing nominating petitions with a number of 3 per cent. The form and the manner of the affidavit and of the nominating petitions are left to the legislature who will prescribe what type of petitions, where they shall be filed, and perhaps the idea that not more than such a percentage may come from any particular county.

I think that the committee of the whole and the convention have indicated a desire to elect. I take no tremendous pride in authorship. I have stolen, begged, borrowed and taken from numerous other plans. I submit that we have discussed this matter quite frequently at great length. This particular plan provides for live opponents. Nobody runs against a shadow or record. If you want live opponents, this is your opportunity. Perhaps we have had the anomaly of partisan nomination and nonpartisan election. We are opening up the primary and the nominating idea.

I would ask that we can perhaps speedily bring this matter to a conclusion for this evening, and ask for a vote on this particular matter.

CHAIRMAN VAN DUSEN: Mr. Woolfenden.

MR. WOOLFENDEN: Well, will Mr. Danhof yield for a question?

CHAIRMAN VAN DUSEN: You have the floor, Mr. Woolfenden, if Mr. Danhof cares to answer.

MR. WOOLFENDEN: Mr. Danhof, do I understand this correctly, that there is no primary election involved in this plan?

MR. DANHOF: Yes.

MR. WOOLFENDEN: There is none?

MR. DANHOF: That is correct.

MR. WOOLFENDEN: Am I correct that it would be possible for any number of candidates that wanted to—let's call them self starters—there could be a dozen or 15 candidates run, and without a primary it would be legally possible under this language for the successful candidate to be elected with, let's say, 10 per cent of the vote?

MR. DANHOF: It is possible, Mr. Woolfenden, that you would have a successful candidate with less than a majority of the vote. You are correct. I submit that it probably is not probable, but it is possible, as you well point out.

MR. WOOLFENDEN: I take it that it would be reasonable to anticipate that the candidates on a ballot would include an incumbent justice who has self nominated himself; candidates nominated by the major political parties or perhaps all political parties, and the possibility that there be some individuals who ran so that you would have nominees coming from 3 different categories of selection, is that correct?

MR. DANHOF: It is possible that you could have the incumbent nominated by affidavit, and each of the major political parties will, say, nominate a different candidate. But probably, I imagine the usual procedure would be that the incumbent nominated by the political party would be renominated by that party even if he filed an affidavit. But the other is possible, yes, Mr. Woolfenden.

MR. WOOLFENDEN: Thank you. Mr. Chairman and fellow delegates, I submit that this plan is ill considered. I think it would be inexplicable to our constituents if we went back to them and reported that the best we could come up with as a method for the selection of the justices for the highest court of this state would admit of literally a bed sheet ballot with many, many candidates on it. I think it is fantastic to contemplate such a thing, and I vigorously oppose it, and I urge the delegates to vote against this amendment.

CHAIRMAN VAN DUSEN: Mr. Davis.

MR. DAVIS: Mr. Chairman and delegates, I rise to support the Danhof amendment. I think that there is considerable unanimity of thinking among the delegates as to the ideal qualifications which would go to supply us with the type of judges which we wish. I think that sometimes a principle which can be simply stated to accomplish this is sometimes difficult. I believe that any plan in which we provide for the election of supreme court justices is confronted with some obstacles.

I would make the conclusion based upon the testimony which has been given in this committee that there is no perfect plan for selection of supreme court justices to meet all of the ideal qualifications. I think that if there had been a perfect plan, that the committee on the judiciary would have presented us with a unanimous or a near unanimous report. This is not the case. I likewise submit that any plan submitted which received serious consideration in the committee of the judiciary or which has received serious consideration on this floor is not entirely bad. In other words, I feel that the issue with which we are confronted is not one which is black or white, but it is one which we refer to as a gray area. In fact, I doubt if there is any delegate in this convention, possessed even with great knowledge as many are, that could predict with accuracy which one of these plans over a 50 year period of time would give us the best supreme court justices. I think that implementation within a plan and factors other than the mechanics itself might well be of more importance than the plan itself. I will state that I do not speak from a position of knowledge or experience, and I don't make this statement to inform the delegates of something with which they are already familiar, but to state that I am aware of this fact myself. However, in my judgment, I feel that this is a good plan.

It has been stated by Mr. Danhof that it is somewhat similar to our present plan. It does rely upon party convention for nomination. I think that it is admittedly somewhat weak at this point. But as I have listened here as an observer, I am of the opinion that some of the alternatives to this plan are less palatable than this. I think that if either political party will attempt to place in nomination people of the highest caliber—which I should think that each party would want to do—that this plan is not as weak as it sounds, and if properly implemented can supply a source of competent people for this position.

I think that we have made an improvement in the filling of vacancies. I recognize that this was not agreed to by all, but in my judgment it allowed for a stamp of approval being place upon any judge by the people of this state before he could be permanently placed in office, and I think that the people of this state will favor this as an improvement. There are other, what I would call somewhat minor, improvements which are presented in this plan, and I submit that at the time this is presented to the people of the state, that in my judgment they will more aptly compare this with our present document than they will with the Constitution of the state of Illinois or Missouri or New Jersey or any other state.

Therefore, in summary, I would say that in my judgment this plan, properly implemented, can place competent judges on the bench. It is a plan which I feel there is no need to apologize to either party for as on a partisan basis. I would feel that it is a plan that either party can accept. It does provide for statewide election of judges, and I think that the people, as I mentioned before, will place their stamp of approval upon it. Compared with our present system, and presented objectively, I feel that this plan will meet with the approval of the voters of this state.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I once again raise a question of parliamentary inquiry. Is this amendment now in order? I would like to direct the Chair's attention to the fact that this is the William Hanna amendment in substance; almost an exact verbatim copy of the Hanna amendment which was voted down. The only change in it is that it is 8 year terms rather than 10 year terms, which was an amendment in itself.

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair would advise that he had consulted with the secretary with respect to the point that you make, and the secretary advises that the amendment is in order.

MR. G. E. BROWN: Why, may I ask? Is it not the same plan?

CHAIRMAN VAN DUSEN: The plan, while in many respects similar to the amendment offered earlier by Mr. William Hanna which was adopted in part and rejected in part, is in many respects different from the amendment offered by Mr. William Hanna which was adopted in part and rejected in part. For that reason the Chair would rule that it is in order.

MR. G. E. BROWN: May I inquire in what respect it differs?

CHAIRMAN VAN DUSEN: The language is in many respects different. The term of office is different. The Chair is not prepared to go through the 2 amendments line by line or detail by detail, but the differences are sufficiently significant to make the amendment in order at this time, Mr. Brown, in the opinion of the Chair.

MR. G. E. BROWN: I would then therefore move that the committee rise.

CHAIRMAN VAN DUSEN: Mr. Brown moves that the committee do now rise. Those in favor of Mr. Garry Brown's motion that the committee do now rise will say aye. Those opposed will say no.

MR. G. E. BROWN: Division.

CHAIRMAN VAN DUSEN: Mr. Brown requests a division. Is it supported? It is suported. Those in favor of Mr. Brown's motion that the committee do now rise will vote aye. Those opposed will vote no.

MR. NORRIS: Mr. Chairman, will you state the motion, please?

CHAIRMAN VAN DUSEN: The motion is by Mr. Garry Brown that the committee do now rise. Division has been ordered. Those in favor of the motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise the yeas are 31; the nays are 92.

CHAIRMAN VAN DUSEN: The motion does not prevail. On the amendment offered by Mr. Danhof, the Chair will recognize Mr. Ford.

MR. FORD: I am getting a lot of assistance over here, Mr. Chairman.

CHAIRMAN VAN DUSEN: The committee will be in order, and Mr. Ford will proceed without assistance.

MR. FORD: Mr. Chairman, I rise somewhat timorously to agree with my good friend Charlie Davis, and the only reason that I am a bit hesitant is that he is a candidate next month and I doubt if it would do him much good in his district if they knew he was agreeing with me.

However, I stated earlier this evening that we felt we had reached a stage where a compromise that may not make all of us happy, but which accomplishes substantially in the minds of many of us the best plan that we could come up with after a great deal of effort on the part of everyone who has worked at this, is better than no concrete plan at all. There are features of this plan that leave some of us with some doubts, but certainly the plan incorporates more positive good than any other alternative that has presented itself on the floor or elsewhere. For that reason I support the Danhof amendment and urge that you vote in favor of it.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, fellow delegates, I feel constrained to oppose the amendment, and I point out just one thing. In the last sentence—which permits the nomination of candidates by petitions of 3 per cent of the total vote for governor—I made a quick computation and, as I say, I am not good in arithmetic, but I compute that under this section which is supposed to be, I suppose, an attraction, it would require, according to my computation, 98,661 good signatures on a petition to qualify a candidate. Why not take that sentence out?

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: Mr. Chairman, this wasn't my plan. I was for another system of selecting justices. I don't think this is the plan of those who favored the district plan, but we have gone all the way around the mulberry bush, and we are back to practically the wisdom or lack of wisdom of the 1908 con-

vention, with some improvements. It seems to me that we have devoted all the time that we profitably can to this proposal, and that the time has come to settle on the best plan that we can find to bring about some consensus in this committee. I think this is it. It proves that the 1908 convention knew more than we realized, I think, and probably went through the same struggle we have gone through and came out just about where we have. I certainly favor the amendment of Mr. Danhof, and hope the committee will adopt it with a strong bipartisan vote.

CHAIRMAN VAN DUSEN: Mr. King.

MR. KING: Mr. Chairman, fellow delegates, I have an amendment on the secretary's desk which I would like to have read at this time.

CHAIRMAN VAN DUSEN: The secretary will read the amendment offered by Mr. King.

SECRETARY CHASE: Mr. King offers the following amendment to the amendment offered by Mr. Danhof:

1. Amend the first sentence of the amendment, after "elected" by inserting "by a majority of the votes cast for the office"; so the language will then read, "The supreme court shall consist of 9 justices to be elected by a majority of the votes cast for the office on a nonpartisan statewide basis."

CHAIRMAN VAN DUSEN: The question is on the amendment to the amendment offered by Mr. King, on which the Chair will recognize Mr. King.

MR. KING: Mr. Chairman, fellow delegates, it seems to me that without this sort of an amendment, and in view of the committee chairman's response to Mr. Woolfenden's question, we are very clearly changing something which is inherent, I think, in our political way of life. I think that it is inherent in the election of any office that that man so elected be elected by a majority of the people voting on the question.

Now, I see no reason why we can't have a primary. Many times, and perhaps most of the time, there will not be more than 2 candidates. I agree with Judge Leibrand that it is pretty difficult to get 3 per cent of the people who voted in the last gubernatorial election to affix their names to a petition. I suppose that most of the time the incumbent will be assured of the support of the party which first nominated him. So perhaps only once in 50 years would the occasion ever arise whereby we would want and need a primary, but if that situation comes to pass, I think we ought to have a primary to narrow the field down to 2 candidates so that whoever we do elect as the supreme judicial officer, or 1 of the 9 supreme judicial officers of the state, will be there by virtue of the fact that he has received a majority of the votes cast for that office.

CHAIRMAN VAN DUSEN: Mr. King, will you yield to Mr. Danhof?

MR. KING: Yes.

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. King, I would like to point out that this state has in the past, and probably will in the future, elect its governor with less than a majority vote; that the man who occupies the White House at the present time got less than a majority vote; that justices of the supreme court presently sitting have gotten less than a majority vote, since we have what in effect is cumulative voting, and you may vote for 1 or 2 but you don't have to vote for both, and nobody is quite sure how many votes are cast. I agree with you that you might have more than 2 candidates. I point this out. Judge Leibrand has very pointedly pointed out the number of signatures it is going to take. This was not put in to make it easy. This was put in to make it difficult, but possible. And I submit to you that to do this would require, perhaps, a special election simply for the supreme court justices when you don't even do it for the governor of the state.

Now we at the present time have 2 political parties. Fifty years from now we might have 4 political parties, and the man who is going to get one more vote than the fellow beneath him is going to be elected governor of this state. We at one time had 3 political parties, in the 1948 election, and it is quite possible that this would happen again. We would like to have a majority vote. I submit that in the past we haven't done it; that the possibility that you point out might be only once in 50 years, because if you have an incumbent he is probably going to run way ahead, and anybody who doesn't have the party—but it is possible that somebody without party help, of a sufficient personality to draw enough votes could be elected. This could be election by a majority.

I simply point out to you that if it is not done for other offices, I don't think it is needed in this particular case, and I think you would clutter up and add to the confusion by making a primary absolutely necessary. The more candidates you have active, Mr. King, the better off the incumbent is going to be. This is proved by history.

MR. KING: Mr. Danhof, I suppose any judgment on that should be reserved to find out who the incumbent is. That might be good and it might not be good. But here you have an unlimited opportunity for candidates to jump into this race; as many as can secure the necessary signatures. Now, as far as the presidential situation is concerned, I am not sure whether you are asking me to endorse the system or the results. But I am not here to endorse either one of them. I think that anybody who holds this office ought to be elected by a majority of the people voting for the office. I feel that way about the president of the United States, but it is not within my power to change it.

CHAIRMAN VAN DUSEN: On the King amendment, Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, Mr. King, in the past and in other elective offices, unless you want to bar completely minority parties from springing into existence and proposing to the public their platform, your amendment would effectively bar them. I don't believe that minority parties should be stopped from nominating supreme court justices any more than they are legislators or governors or anyone else. It is conceivable under the present constitution and the present statute adopted pursuant thereto that you can have 8 and 9 candidates, because each political party could nominate 1, and it would be impossible for 1 candidate to get a majority.

The second problem, raised by Judge Leibrand, 3 per cent of this total vote cast is a sizable number. If any of the delegates have had the pleasure of attempting to circulate petitions for nonpartisan office and to secure a sizable number of the total votes cast for governor, they will realize that there will be no self starters in this race for supreme court justice. This idea was not new or original with me when I first put in the amendment. This idea was originated by none other than Charles Evans Hughes, that it should be applied to all nominations and conventions to allow a dissatified person to enter the election as an appeal from the dictates of a convention bossed by a particular faction or group of people.

While this petition may never be used, it will serve 2 purposes. First, it will be a psychological sword hanging over the political party that if they nominate only political hacks the people and the bar of this state may rise up and nominate someone else. Secondly, there is no requirement that the political parties nominate. The word used in this is "may," and if some group feels that there must be opposition to the incumbent, they may circulate petitions. Three per cent is a difficult number, but to insist that you have a majority vote, whether you have 1 candidate from each political party or only 2 or 3 candidates, the minute you have more than 2 the insertion of the word majority makes impossible any elective system that we have in the United States or any of the several states.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I wish to oppose the King amendment. It has this additional effect—I agree with everything that Bob Danhof has said about it and what it would do to the language that we have already adopted is write this kind of condition into it. Two conditions, actually—first of all, the present amendment says we elect no less than 3 judges at a time, in effect. Now, in a multiple race of this kind it is impossible to determine the number of votes cast for the office, and there is one way to do it, and that would be for the judicial

election to be held for the supreme court completely separate and apart from any other matter that might be on the voting machine at the particular time, and then to prescribe that if there are 3 vacancies the candidates would have to file for a specific vacancy and run head on head, as it's called, against a particular incumbent, for example. If you did these 2 things, then you can carry out the effect of the King language. There is no other way to implement it.

What Mr. King is asking you to vote for is a writing into the system of 2 more rigid requirements, and that is the head on head vote and the separate election which, you may well recognize, becomes a very expensive thing on a statewide basis. I urge you to defeat the amendment.

CHAIRMAN VAN DUSEN: Dr. Pollock.

MR. POLLOCK: I had a question of Mr. Martin, and not on the King amendment. Will you let me have it at that time?

CHAIRMAN VAN DUSEN: You will be recognized at the appropriate time, Dr. Pollock. The question is on the adoption of the amendment offered by Mr. King. Does any delegate desire to have it read again? If not, those in favor of the King amendment will say aye. Those opposed will say no.

The amendment is not adopted. Mr. Garry Brown has offered a substitute for the Danhof amendment, on which the Chair will recognize Mr. Brown. The secretary will read the Brown substitute.

SECRETARY CHASE: Mr. G. E. Brown offers the following substitute for the amendment offered by Mr. Danhof:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

Justices of the supreme court shall be nominated at party conventions for election on a nonpartisan statewide basis as provided by law. At the general election preceding the expiration of the term of office of any justice and every 8 years thereafter so long as he retains his office, every justice so elected shall be subject to approval or rejection by the electorate. The electorate of the entire state shall vote on the question of approval or rejection in a manner and form provided by law. Justices of the supreme court in office at the time this constitution takes effect as a result of having been elected shall be eligible to retain their office in accordance with this section.".

CHAIRMAN VAN DUSEN: On the substitute amendment offered by Mr. Brown, the Chair will recognize Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, members of the committee, when I made the motion to rise previously it was with the idea that the delegates and the members of this committee had not had an opportunity to have a copy of this plan before them. It did not appear it would be available here this evening, and I thought it best that each delegate have a copy of this. Since we are going to get to the plan, however, I shall start to discuss it. I would like to have each of the delegates here reflect back to the commencement of this convention and to reflect back upon what his ideas were, what her ideas were regarding the selection of the judiciary, especially the supreme court. I think if you do reflect back at that time it was the consensus that we should seek a method to obtain the best qualified jurists. Second, that we should eliminate or at least lessen partisan control or effect on that judiciary, and third, the conclusion of these two, that we should have an independent judiciary plus tenure for good jurists.

Now we have had presented to us a district plan, an appointive plan and a so called Hanna amendment which is now in the form of the Danhof amendment before you. Let us compare these 3 plans on the basis of these tenets that we accepted before we met this evening and agreed upon some time ago. First of all, how do these plans compare with respect to the opportunity to select the best qualified jurists? With the district plan, certainly there is a good opportunity to select qualified jurists, but within a limited area. The objections to the district plan in this regard have been that conceivably within a district there will not be such a qualified or the most qualified jurist. This was of course corrected to an extent by saying that the jurists did not have to live within the district. The district plan people recognized this. Then we have the appointive plan. Now certainly this would be good on this score in that it did provide for a so called blue ribbon commission to select competent people who would be presented to the governor for appointment as justices of the supreme court. The objection to this plan, of course, everyone recognizes that a blue ribbon commission is not the way that the people of the state of Michigan want to select their justices. Thirdly, we have the Hanna or the Danhof plan. Now what does this do? It requires that each of the justices of the supreme court keep his eye on his party because he must go back to his party for his nomination or he must run against the party's money, because they can nominate somebody else. This, of course, is not present in the present plan, because he doesn't have to go back for nomination. He doesn't have to run statewide every 8 years.

The second point is, does it lessen the political or partisan control? The district plan being nonpartisan both in the primary and in the general election certainly does eliminate party control, and this scores high in this respect. The appointive plan, no, it does not eliminate the partisan aspects of it because the gubernatorial appointments very likely will be partisan in nature, and you would end up with a majority of the commission having a partisan influence on the selection of your judges.

What about the Danhof plan? This certainly doesn't eliminate the justices of the supreme court from politics, because it says to the justices you must go back to your party every 8 years to get its nomination. Or if you certify yourself for nomination you may find yourself running against your own party and your own party's money and, in addition, running against another party and another party's money; and you will be campaigning statewide—having certified yourself for nomination—against both parties, their people and their money.

Now do any of these plans provide an independent judiciary and offer at least the promise of tenure for good jurists? The district plan, for the reasons we pointed out therefore, does not. Does the appointive plan? Yes, the appointive plan scores high on this point, because the appointive plan provides for the various things so far as the future term of office, as does the amendment I have put before you. What about the Danhof amendment? Does the Danhof amendment do this? It does not. For, as has been pointed out, the justice must go back to his party; he must go back to the people every 8 years and campaign statewide.

Now it has been said here as an objection to the present plan that the idea of party nomination and running statewide in the general election on a nonpartisan basis is a hybrid, that this is bad, that the status quo is therefore bad and something must be done about it. I will admit that the amendment that is presently before you perpetuates this, so to speak, but let me point out to you it perpetuates this for the initial election and that one only. It removes the jurist from the partisan aspect of partisan politics after the first election. Assuming he is a good jurist— he has done a good job—he has a record that he can stand on.

Is it necessary to have this done at party conventions? I think that it is. A nonpartisan primary statewide is not much less than ridiculous, because of the nominees that you would have at a nonpartisan statewide election. This aspect has been before the committee, too; I think in the Kuhn amendment. The appointive system, in turn, precludes the voters from ever having a voice in the selection of their jurists. It certainly would seem then that at some time in the course of the tenure of the judge that he should have had to go to the people for his initial selection. Under the appointive system, of course, he does not.

Another objection is the statewide campaign discourages or precludes the most capable jurists, attorneys, lawyers from running. This I think is a very true statement, but this is

perpetuated by the Danhof amendment. It is perpetuated by some of those that have come up before it. I would point out to you that the amendment that is presently before you would encourage the very best in the way of attorneys to run for the office of supreme court justice. He can be convinced to run for the office, and you can seek the very top people, because, in effect, you say to him that you must run statewide for this first election, but following your election you do not have to go back every 8 years. In effect, some might say that this says to the man that this is life tenure—life tenure, but once being selected by the voters.

Now, what are the advantages of the amendment that is presently before you? The people in the first place elect their jurists on a nonpartisan ballot after nomination by the party, but each of these candidates that is put up by the party will run statewide, but neither will have a headstart. There will be no incumbency label in the initial selection. The judges will run against their own ability. They will have equal chance before the voters. There will be no incumbency label. The best of the candidates are likewise encouraged to run in the first instance since they have an equal stature. They are not running against an incumbent. You have heard it said here often that to run against an incumbent is to not run at all. The promise of tenure in the office with a statewide election every 8 years will be a further threat to the jurists, since it once again depends upon going back to his party for his nomination and for its money or, if he doesn't get its nomination, to have another party put up against him. And the idea of putting a proposition on the ballot, should Justice So and so be continued in office, is an attempt to get the people to direct their attention to selecting supreme court justices according to the ability and to the judicial record of the individual rather than to the candidates in a popularity contest.

I would suggest to anyone here who has advocated obtaining the best jurists, and the attempt to get people to reflect upon the man for his ability as a jurist rather than his popularity, that you cannot in good faith adopt or support the Danhof amendment. It is a novel idea to run against a record, to have a proposition on the ballot, but is it better to ask a veteran jurist to run against another man and let popularity decide it? I have spoken too long, and I am sure that I will get much applause on this, but all I ask is that you think.

CHAIRMAN VAN DUSEN: On the amendment proposed by Mr. Garry Brown, the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, I wonder if it would be possible for the secretary to provide us written copies of this by morning? I cannot carry the entire content of this amendment in my mind.

CHAIRMAN VAN DUSEN: They can be provided.

MR. LEIBRAND: In that event, Mr. Chairman, I move the committee do now rise.

CHAIRMAN VAN DUSEN: Judge Leibrand moves that the committee do now rise. Those in favor of the motion by Judge Leibrand will say aye. Those opposed will say no.

The motion does not prevail.

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? It is supported. Those in favor of the motion by Judge Leibrand that the committee do now rise will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 61, the nays are 65.

CHAIRMAN VAN DUSEN: The motion does not prevail. On the Brown substitute for the Danhof amendment the Chair will recognize Mr. Bonisteel. Mr. Bonisteel passes. The question is on the substitute offered by Mr. Garry Brown for the amendment offered by Mr. Danhof on which the Chair will recognize Mr. Ford.

MR. FORD: I wish to oppose the amendment, and once again support the main amendment without such amendment, and urge you to vote no.

CHAIRMAN VAN DUSEN: The Chair will ask the secretary to read the amendment.

SECRETARY CHASE: The Garry Brown substitute for the Danhof amendment is as follows:

[The amendment was again read by the secretary. For text, see above, page 1593.]

CHAIRMAN VAN DUSEN: Those in favor of the amendment offered by Mr. Garry Brown will say aye. Those opposed will say no.

MR. G. E. BROWN: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? The demand is not supported.

The amendment is not adopted. The question is now on the amendment offered by Mr. Danhof, on which the Chair will recognize Dr. Pollock.

MR. POLLOCK: It is a little bit late now, Mr. Chairman, but I understood Mr. Martin to say, if he would be good enough to answer this question, that the Danhof amendment got us back to the Constitution of 1908. I can't seem to recognize it in the original Constitution of 1908.

CHAIRMAN VAN DUSEN: Mr. Martin.

MR. MARTIN: It is getting pretty late to remember, but what I meant to say was it got us back practically to the system of election which we are now using, and with some important changes which I think improves it, particularly the change which allows the candidate for reelection to file an affidavit of candidacy, and the change which allows for the filing of a nominating petition with a relatively large number of signatures.

MR. POLLOCK: But Mr. Chairman, Mr. Martin, the Constitution of 1908, when you were talking about the wisdom or unwisdom of the convention you weren't talking about what transpired since. In 1908 they provided an altogether different system than the Danhof amendment provides.

MR. MARTIN: I was talking about the system which we are now using.

MR. POLLOCK: You recognize that it does vary from the original wisdom of the Convention of 1908?

MR. MARTIN: That is right.

CHAIRMAN VAN DUSEN: Mr. Habermehl.

MR. HABERMEHL: Mr. Chairman, fellow delegates, I realize that it is very easy to become discouraged over this matter and accept something that no one really wants. So far on the Danhof amendment I haven't heard anyone say anything but words of extremely faint praise.

This matter that we are on I think you all ought to recognize is the selection of judges which constitute the court of last resort in just about 999 out of 1,000 cases. After the supreme court in almost all cases there is nowhere else to go, and it doesn't make any difference whether it is your life or at least your liberty for life at stake, or whether it is $10 million or what it may be. I suggest that if we accept some plan here on the basis of getting out of here and going to bed, that we are not exactly doing the duty for which we were elected. It seeems to me that 144 delegates here ought to be able to arrive at a plan that will serve the people of this state, and it need not be something that everyone accepts with a great deal of misgiving. For that reason I would oppose any plan just for the sake of getting a plan. It seems to me if we have to take a few more days on it, the importance of the subject ought well to deserve those few more days.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof. Mr. Bonisteel.

MR. BONISTEEL: Mr. Chairman and fellow committeemen, I support wholeheartedly what has just been said. We are dealing with a very important subject and one which we expect to last for a period of years. I can think of nothing that is really more serious than the plan which we adopt in this convention for the selection of supreme court justices.

I have been informed, whether rightly or wrongly, that we already have other amendments pending on the desk or are

about to be placed upon the desk, and it seems to me that just to have a sense of urgency here, which it seems to me I completely sense here in this committee, that we have just got to do something in order to get a time limit placed upon what we are trying to do on a subject which I consider as important as any that has ever come before this convention, and that is the reason I got up a little while ago; because I agreed wholeheartedly this committee should rise, and we should go home and come back tomorrow, and maybe with some clear thought we can produce the kind of thing Mr. Habermehl was talking about a moment ago.

Now, Mr. Chairman, I do move that this committee do now rise.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Bonisteel that the committee do now rise. Those in favor of the motion will say aye. Those who are opposed will say no.

The Chair is in doubt. Those who are in favor of Mr. Bonisteel's motion that the committee do now rise will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Cudlip?

MR. CUDLIP: I would like to ask how many amendments or substitutes are on the secretary's desk in connection with this matter?

CHAIRMAN VAN DUSEN: The Chair doesn't think the question is in order at this point, Mr. Cudlip.

MR. CUDLIP: I will withdraw it.

CHAIRMAN VAN DUSEN: Have you all voted? Mr. Cudlip, the secretary has advised there are no further pending amendments. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion that the committee rise, the yeas are 79; the nays are 43.

CHAIRMAN VAN DUSEN: The motion prevails. The committee will rise.

[Whereupon, the committee of the whole having risen, President Nisbet resumed the Chair.]

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the committee of the whole has had under consideration one proposal of which the secretary will give a detailed report.

SECRETARY CHASE: Mr. President, the committee of the whole has had under consideration **Committee Proposal 91, A** proposal pertaining to the supreme court; has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: Mr. President, I just want to announce that tomorrow I intend to move in the morning that the delegates here take up the question following the completion of the judicial article of going to the article on legislative organization afterwards, and I just want to mention it to them now so they can think about it.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: Mr. Follo requests to be excused from the session of Friday, March 16. He is scheduled to speak to an organization at 7:00 o'clock and must leave here Friday morning to be there on time.

The apples today are from Mr. Rush. (applause)

PRESIDENT NISBET: Without objection, the request for leave will be granted.

The hour is late, but there is one other matter deserves our attention tonight, and I have just been informed that Mr. and Mrs. Bill Pellow are the parents of a brand new daughter. (applause) The Chair recognizes Mr. Radka.

MR. RADKA: Mr. President, it is with pleasure that I offer my plan for the convention. I move that we adjourn.

PRESIDENT NISBET: The question is on adjournment. Those in favor will say aye. Opposed, no.

The motion prevails. We are adjourned until tomorrow morning at 9:30.

[Whereupon at 11:20 o'clock p.m., the convention adjourned until 9:30 o'clock a.m., Tuesday, March 13.]

NINETY-EIGHTH DAY

Tuesday, March 13, 1962, 9:30 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Through the courtesy of Dr. Anspach, our **invocation** will be given this morning by the Reverend Robert C. Smith of the First Methodist Church of Mt. Pleasant. Please rise.

REVEREND SMITH: Let us pray. Almighty God, who has again brought us to the beginning of this day, defend us, we pray Thee, with Thy Holy Spirit. For this quiet moment before the pressing concerns of a new day move in upon us, wilt Thou lift us from the confusion and bafflement of these desperate times into the unhurried, healing calm of Thy presence.

Today we come for light to walk by. Save us from the futile repetition of old errors. Let not ignorance nor mean partisanship nor selfish greed block the way to a new order in our state that we might demonstrate the way of peace, of brotherhood, of increasing opportunities for all Thy children. In an hour when such vast issues are at stake may those who are here, conscious of the great importance of their calling, rise to greatness of vision and soul, as the anxious eyes of all the people of the state are upon this chamber of freedom. For these things we pray in the Spirit of Christ. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present will please vote aye. Have you all recorded your presence? If so, the secretary will lock the machine and record the attendance.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Absent with leave: Messrs. Dade, Heideman, Hutchinson, Kelsey, Liberato, Madar, Mosier, Sterrett, Upton, Yeager and Youngblood.

There are no unexcused absences.

[During the proceedings the following delegates entered the chamber and took their seats: Messrs, Hutchinson, Upton and Yeager.]

PRESIDENT NISBET: Reports of standing committees.

SECRETARY CHASE: No reports.

PRESIDENT NISBET: Reports of select committees.

SECRETARY CHASE: None.

PRESIDENT NISBET: Communications from state officers.

SECRETARY CHASE: None.

PRESIDENT NISBET: Second reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Third reading of proposals.

SECRETARY CHASE: Nothing on that calendar.

PRESIDENT NISBET: Motions and resolutions.

SECRETARY CHASE: No resolutions on file.

PRESIDENT NISBET: Unfinished business.

SECRETARY CHASE: None.

PRESIDENT NISBET: **General orders.** Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor say aye. Those opposed, no. The motion prevails. Mr. Van Dusen will take the Chair.

[Whereupon, Mr. Van Dusen assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN VAN DUSEN: The committee of the whole will be in order. Before we return to our consideration of matters relating to the organization of the supreme court, the Chair is advised that Dr. Anspach has a message for us which may speed us on our way. Dr. Anspach.

MR. ANSPACH: Mr. Chairman and members of the committee, we have had some difficulty finding the right side of the street as far as electing justices of the supreme court is concerned. Therefore, this is to show that other people have had difficulty finding the right side of the street, and that you eventually find it.

This inebriated gentleman walked up to a policeman and said to him, "Where is the other side of the street?" The policeman said, "Over there." "Well," he said, "that's peculiar. I was over there a while ago, and I asked the same question, and they told me it was over here." (laughter)

CHAIRMAN VAN DUSEN: Now that we know where we are, (laughter) we will return to our consideration of **Committee Proposal 91,** A proposal pertaining to the supreme court.

For last previous action by the committee of the whole on Committee Proposal 91, see above, page 1577.

The question is on the amendment offered by Mr. Danhof.

For text of amendment, see above, page 1590.

The Chair will recognize Dr. DeVries.

MR. DeVRIES: Mr. Chairman, fellow delegates, I move we reconsider the vote by which the Brown substitute amendment failed of passage yesterday, for the reason that I don't think we had adequate time to consider it. It wasn't even projected on the wall. I would like to move reconsideration, that copies be printed, and that we have a chance to look at the amendment.

CHAIRMAN VAN DUSEN: The question is on the motion of Dr. DeVries that the committee reconsider the vote by which the amendment offered by Mr. Garry Brown to the amendment offered by Mr. Danhof failed of passage. Those in favor of Dr. DeVries' motion say aye. Those opposed will say no.

The motion does not prevail. The question now—

DELEGATES: Division.

CHAIRMAN VAN DUSEN: Division is requested. Is the demand supported? It is supported. Those in favor of the motion of Dr. DeVries that the committee reconsider the vote by which the Garry Brown substitute amendment failed of passage last night will vote aye. Those opposed will vote no. For what purpose does the gentleman rise, Mr. Walker?

MR. WALKER: To ask that the voting machine be cleared before we take this vote. Everybody is voting aye to indicate their presence. I notice several around me have not been centered yet.

CHAIRMAN VAN DUSEN: The delegates will clear the machine and vote again. The machine will be cleared, please. Those in favor of the motion of Dr. DeVries to reconsider the vote by which the Garry Brown substitute amendment was not adopted will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the motion to reconsider, the yeas are 47, the nays are 79.

CHAIRMAN VAN DUSEN: The motion does not prevail. The question is now upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. Millard.

MR. MILLARD: Mr. Chairman and members of the committee, this morning I was discussing the Danhof amendment with several of the delegates, and they did not seem to know exactly what the Danhof amendment did. I would like to ask Mr. Danhof a question, if he would care to answer.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Millard.

MR. MILLARD: Mr. Chairman, Mr. Danhof, just what is the difference between your plan and the present plan? There seems to be some confusion that your plan is identical with the way we are electing supreme court judges now. Will you kindly explain the difference?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Mr. Chairman, Mr. Millard, I think, as Mr. Martin pointed out, we incorporate the present system, but we do 2 additional things. One, we allow the incumbent justice to renominate himself by filing an affidavit for a declaration of candidacy. Two, we allow any other qualified person to become a nominee by obtaining the prescribed number of signatures. So, in essence, we have opened up, so to speak, the nominating procedure.

Now, perhaps — I'm not sure whether this is part of the problem — but it should be borne in mind, Mr. Millard, that having previously adopted the sections in Committee Proposal 96, we have eliminated appointment by the governor and that appointee then running for the office with the incumbency designation. You will recall that we are filling vacancies in all courts of record, including the supreme court, by election either at general or special elections, and further that the incumbency designation is given only to an elected judge or justice.

Now, those, in essence—the first 2 that I have named — are the differences in particular regarding the nominating procedure; and of course the other relates to the fact that all vacancies will be filled by election, as has been pointed out by a number of speakers.

CHAIRMAN VAN DUSEN: Mr. Millard.

MR. MILLARD: Mr. Chairman, Mr. Danhof, is there any provision to fill the vacancies until the election occurs?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: Yes. We have authorized the supreme court to use a retired justice or judge, if they so desire, during the interim period between the time of the vacancy and the election. This does not have to be done, and if the court should decide to continue operation with just 8 justices, they could do so.

MR. MILLARD: Thank you.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G.E. BROWN: A question for Mr. Danhof, Mr. Chairman, if I may.

CHAIRMAN VAN DUSEN: If Mr. Danhof cares to answer.

MR. G. E. BROWN: Mr. Danhof, in substance, the Danhof amendment and the Brown amendment are the same, except that in one case the man runs against his record, so to speak —a proposition is put on the ballot, "Shall Justice so and so be retained?" And then in the other case the justice will every 8 years go back for reelection; is that correct?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: I think you are correct, Mr. Brown. That is one of the main differences. The other, I think, is in the method of original nomination. I think yours restricted it just to the party, and did not allow any other qualified person. But, apart from that, that is the main difference: that in your plan they run against the record; and in this one there would be an opponent at least from the opposite party.

MR. G.E. BROWN: A further question, Mr. Danhof. Another difference is the person must go back to his party for his nomination, or he may certify himself, is that correct?

MR. DANHOF: By either choice he may be renominated.

MR. G.E. BROWN: If he certifies himself as a candidate, the parties then in their political conventions may nominate their own people, is that correct, so there may be 3 in the race, plus any that might file individually?

MR. DANHOF: That is possible.

MR. G. E. BROWN: And then, Mr. Danhof, isn't it true, from a partisan standpoint, that the Danhof amendment as contrasted to the Brown amendment gives to the parties greater control over their jurists?

MR. DANHOF: That's your conclusion, Mr. Brown.

MR. G. E. BROWN: Isn't that your conclusion, Mr. Danhof?

MR. DANHOF: You were going to ask me a question. I don't know. It's possible, I don't know.

MR. G. E. BROWN: Is your answer "I don't know"?

MR. DANHOF: If you ask if they're going to have control, I don't know if they'll have control or not. You ask me the questions, and then you draw the conclusions. I'm not sure I agree with your conclusion, but you made it.

MR. G. E. BROWN: Mr. Chairman, Mr. Danhof, I was merely asking what was your conclusion then as between the 2 plans, and the partisan aspect of the 2 plans.

MR. DANHOF: As you pointed out, Mr. Brown, the party may nominate someone other than the incumbent. And, in essence, this is probably the greatest difference between the 2 plans. And if the incumbent decides to return to the party and ask for their nomination, I imagine that they will either grant it to him or not. On the other hand, he may file, and the party may just automatically go along. Now, whether that's going to give them more or less control I don't know. It's possible, I assume. And you have pointed out very adequately the contrast between the amendment that I offered and the one which you offered.

CHAIRMAN VAN DUSEN: Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I inquire of Mr. Danhof?

CHAIRMAN VAN DUSEN: You may, if the gentleman cares to answer, Mr. Leibrand.

MR. LEIBRAND: I note, Mr. Danhof, that your provision requires, or at least permits, an incumbent to give notice of his application for reelection not less than 180 days prior to the expiration of his term. That's 6 months that he is allowed to campaign. Am I correct in that, Mr. Danhof?

MR. DANHOF: Well, the time set upon which he would have to file his affidavit, yes.

MR. LEIBRAND: And that gives him a minimum. Now, as I recall the statutes, in the fall election the state conventions are held at least 66 days before the November election, and in the spring election at least 37 days before the spring election. That is, 66 days before the fall and 37 days before the spring. Now, if this is a convention nomination, the nominee doesn't know he is nominated until 37 days before the election in the spring or 66 days in the fall; is that correct?

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: If the statute remains the same, that could well be, Judge.

MR. LEIBRAND: Well, it would seem, then, would it not, that an incumbent is given an undue advantage in the situation. And I oppose the Danhof amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. Higgs.

MR. HIGGS: Mr. Chairman, I believe I have an amendment at the desk.

CHAIRMAN VAN DUSEN: Is this an amendment to the Danhof amendment, Mr. Higgs?

MR. HIGGS: Yes.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: May the secretary inquire of Mr. Higgs, do you desire to offer it as a substitute for the Danhof amendment?

MR. HIGGS: No. I have an amendment to the Danhof amendment. I just inquired at the secretary's office, and I was advised that it had been presented. It is a sentence to be added after the word "filled."

SECRETARY CHASE: Mr. Higgs offers an amendment to the Danhof amendment:

1. Amend the amendment at the end of the third sentence after "filled" by changing the period to a comma and inserting "except no candidate shall be nominated by the convention of a party to oppose an incumbent which it originally nominated and who has filed a declaration of intention.".

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs to the amendment offered by Mr. Danhof. The Chair will recognize Mr. Higgs.

MR. HIGGS: The purpose of this amendment is to fortify what I think is a merit in the Danhof amendment. And that is the proposition that an incumbent may, by nominating himself, secure a reasonable degree of judicial independence. However, this particular merit of the Danhof amendment is weakened by the fact that the party may, if this happens, nominate someone to oppose the incumbent which it originally nominated and who so filed such an intention. And I think that this defeats the purpose.

We have several things involved. First of all, it must be borne in mind that the Danhof amendment involves a statewide nonpartisan election. Consequently, an incumbent who has declared himself a candidate by filing a declaration of intention either must dig down into his own pocket for $50,000 campaign expenses, or he must rely on the party support. Now, if he is required to run against a candidate nominated by his own party, it removes all of the advantages that may be involved in the Danhof amendment with regard to relieving this particular situation. I think that it would offer a greater degree of party responsibility in the original selection of a nominee for the supreme court if that party in its original selection had in mind that if they were successful in electing this candidate to the supreme court, that they would thereafter be unable to oppose him at the election. This is something of a compromise between the situation where you have an appointee running on his record and an elective process.

I think you should bear in mind that one of the most serious criticisms of the present supreme court selective process is the fact that the incumbent justice, in order to be reelected, must first go back to the party for its nomination, and, secondly, he must rely upon that party for his campaign expenses in running for office. Consequently, I feel if we are to have the real merit of the proposition advanced by the Danhof amendment, which is to give the incumbent justice a greater degree of judicial independence by permitting him to renominate himself, in order to achieve that real merit, we must take this one step further and prohibit the party who originally nominated him from setting up an opponent to run against him. Thank you.

CHAIRMAN VAN DUSEN: Mr. Barthwell.

MR. BARTHWELL: Mr. Chairman, I would like to ask Delegate Higgs a question through the Chair.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Barthwell.

MR. BARTHWELL: My question is, if an incumbent renominates himself, does it necessarily follow that the party will pay for his campaign expenses? I don't know much about the party conventions and party habits, so maybe Delegate Higgs could answer that for me.

CHAIRMAN VAN DUSEN: Mr. Higgs.

MR. HIGGS: Mr. Barthwell, it is my understanding that it does not necessarily follow that the party will pay for his campaign expenses. We have no control over their budget. But if the party were permitted to nominate an opponent to run against him, then I think he would lose all advantage of having been originally the nominee of that party.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: Mr. Chairman, members of the committee, Mr. Higgs' amendment would compound what I consider to be the most objectionable part of the proposal, or the principal part that leaves some of us uneasy, if we start off on the assumption that we are trying to take the judge away from improper pressure. Mr. Higgs' amendment would say that if a candidate chooses to renominate himself, that the party from whence he came originally is then foreclosed from being the sponsor of any candidate of superior qualifications that it thinks might be an improvement over the man they put on the bench before. Having now had an opportunity to see him on the bench and judge his judicial temper, the party responsible for placing him in that position would not be in the position of meeting the equal responsibility of removing him from the position by replacing him with someone better. And it seems that the party responsible for placing a bad judge or an inept judge or a judge who for any reason might better be replaced on the bench should have the primary moral responsibility for replacing him.

Now, I'm informed by a number of people with many years of experience, some of them twice my age, that in their recollection neither major political party in this state has ever failed to renominate the incumbent candidate supported by that party in the first instance when he went on the bench. Now, this being the case, this bogeyman about the terrible pressure of going back to the party for support after you're on the bench doesn't seem to me to be very serious. It certainly hasn't proven to be in the past.

There was a political scientist on a television program emanating out of Michigan State Monday evening who indicated that some delegates were bent on writing a constitution with certain people and certain specific conditions in mind. Mr. Higgs' amendment certainly aims itself at a 1 man situation. I don't direct this question directly at Mr. Higgs, but at everyone else who thinks that this self renomination is a way to remove the judge from pressure, and ask you this: if you permit a candidate to nominate himself without regard to any party support for reelection to the court, where does he then get the money that is necessary to wage a statewide campaign? To whom does he owe loyalty, if at all, after that campaign is finished? Would you prefer that he go to a few individuals and secure large sums of money to support his campaign, or would you prefer the present system, where he is supported openly and notoriously, if you please, by the 2 major parties? Everybody knows where his support is coming from. He has to account and the party has to account under the election laws for every penny that is spent in his behalf, and there are no questions about where he stands or who stands for him.

But when you say to a man, "Renominate yourself; you don't have to be endorsed by anyone," then the question that would be in my mind when this kind of a man ran, if his party decided not to support him, would be, one, in view of the long, long history of this state where the party had never repudiated an incumbent in the past, what is so serious in this man's background as a judge that would lead the party to take this position which by all tests of politics would be a bad choice? And two, if he decides, notwithstanding the lack of support by one of the major parties, to wage a statewide campaign, where is the money and the support coming from, and who is behind him? These are questions that arise when you get into this area of self nomination.

One thing that alarms me a little bit is the attitude that seems to creep into this thing that there's something immoral or improper about the major political parties in this state supporting candidates for public office. This is a basic part of the American democratic system—democratic with a small "d"—republican system, Mr. Iverson says behind me. But it is a basic part of our democracy. Now, if we start off on the assumption that it is wrong for the parties to take positions on issues and people, and to stand for something, then we should continue on down the road and make it ever increasingly difficult for the parties to support a candidate for public office, and thereby identify that candidate with a particular philosophy and platform. If we subscribe, on the other hand, to the theory that the parties are a proper exercise of the processes of democracy, then I think we should do nothing to make it more difficult for those parties to openly support candidates and let the candidate take the responsibility for the people by whom he is surrounded. Mr. Higgs' amendment should be voted down, and the Danhof amendment, without amendment, should be approved.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs. Mr. Higgs.

MR. HIGGS: Mr. Chairman and fellow delegates, if Mr. Ford is alarmed, I am also somewhat alarmed to hear a great exponent of the free elective system state that the primary moral responsibility for replacing a supreme court justice lies with the party. I could hardly believe what I heard. It seems to me that the primary moral responsibility for replacing justices of the supreme court under an elective system should lie with the people. And this justice should have a certain degree of judicial independence in the exercise of his office.

In answering one further point of Delegate Ford—that he is disturbed by the idea that there is creeping into this the idea that there's something immoral in a party supporting a candidate for public office—I thought perhaps he was supporting my amendment of yesterday, because this I think is the reason why we should vote down the Danhof amendment. It has done nothing to correct the inconsistency between party nomination and nonpartisan election. If Mr. Ford is serious in being alarmed by that idea that there is something immoral in this aspect, then he should oppose the Danhof amendment; because it just does nothing to eliminate the partisan influence, and at the same time has presented to the people the false idea that the candidate is nonpartisan, when in fact he can be nothing but party supported.

CHAIRMAN VAN DUSEN: Mr. Garry Brown.

MR. G. E. BROWN: Mr. Chairman, I'd like to address a question to Mr. Ford. Mr. Ford, do you believe that a supreme court justice should espouse and promote his party philosophy?

CHAIRMAN VAN DUSEN: Does the gentleman care to answer, Mr. Ford?

MR. FORD: If you will give me an example, and then put it in context of where, when, and under what circumstances, I'll answer the question.

MR. G. E. BROWN: Well, Mr. Ford, I think this is begging the question a little bit.

MR. FORD: Not at all. I don't think that the conduct of a judge as a judge and the conduct of a judge as a fishing companion are at all the same. If he wants to debate with me party philosophy while we are fishing, or having a lemonade, that's one thing. If he wants to debate party philosophy when he is on that bench, I'm opposed to it, whether he is a Democrat or Republican.

MR. G. E. BROWN: Then your answer is that you don't believe that a supreme court justice, operating as a justice, should espouse or promote his party philosophy?

MR. FORD: Not from the bench, or in any position in which he is placed as a member of the bench, no.

MR. G. E. BROWN: A further question, Mr. Chairman. Mr. Ford, do you in turn think that other public officers are in the same position as a jurist with respect to this party activity?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I don't think I can answer that.

MR. G. E. BROWN: Because you don't understand the question, or you don't know the answer?

CHAIRMAN VAN DUSEN: Mr. Brown, the Chair will rule that the question is not in order. The question is on the amendment offered by Mr. Higgs. Mr. William Hanna.

MR. W. F. HANNA: Mr. Chairman, fellow delegates, I would oppose the Higgs amendment for one very practical reason that I see. If we retain the balance of the Danhof amendment, we have allowed the incumbent to file by affidavit as a candidate. Assuming now that this incumbent is for some reason senile, semimentally incompetent, or otherwise, he can file, and the implication of the Higgs amendment is that the party which first nominated him would then be stuck with a candidate who might conceivably be a laughing stock as he ran. He may not be physically able to campaign. On a local level, we have elected judges who have been confined to mental hospitals. It seems to me that if a political party has an obligation, it has an obligation also to see that there are competent qualified members.

Now, a great many of us have disagreed with the political and economic philosophy of the current supreme court. I submit to you that of all courts that ought to recognize changing times—and you cannot recognize changing times without recognizing changes in economic and political circumstances—it should be the supreme court. The fact that I may disagree with the political philosophy of the supreme court or the economic philosophy of the supreme court does not mean that that supreme court should not espouse a political or economic philosophy and move along with the times. What it means is that I disagree with the economic philosophy it espouses. And to not let a political party, if it saw fit, nominate a man who recognizes the change in the times, or to force them to forego a nomination because some physically incompetent or mentally incompetent person had filed an affidavit, is to destroy the very thing that we are trying to have: competent candidates who can make an issue in an election.

I therefore oppose the Higgs amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Higgs to the amendment offered by Mr. Danhof. Does any delegate desire to have the amendment read again? If not, those in favor of Mr. Higgs' amendment to the Danhof amendment say aye. Those opposed, no.

The amendment is not adopted. The question now is upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Mr. McAllister.

MR. McALLISTER: I would like a division on this.

CHAIRMAN VAN DUSEN: Mr. McAllister requests a division. Is the demand supported? It is supported. Those who are in favor of the amendment offered by Mr. Danhof to section a of Committee Proposal 91 will vote aye. Those who are opposed will vote no. Dr. Nord.

MR. NORD: Did you say the Danhof amendment?

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Danhof. The commitee will be in order. Dr. Nord, was your question answered?

MR. NORD: This is the Danhof amendment?

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Danhof to section a of Committee Proposal 91. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Danhof to section a, the yeas are 82; the nays are 46.

CHAIRMAN VAN DUSEN: The admendment is adopted. Are there further amendments to section a of Committee Proposal 91? If not, the section will pass.

Section a, as amended, is passed. The secretary will read section g.

SECRETARY CHASE: Section g has been deleted.

CHAIRMAN VAN DUSEN: Section g, as amended, is passed. Are there any amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Mr. Bonisteel offers the following amendment to section f:

1. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof"; so that the language will then read; "Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein."

CHAIRMAN VAN DUSEN: The question is upon the amendment offered by Mr. Bonisteel to section f of Committee Proposal 91, on which the Chair will recognize Mr. Danhof.

MR. DANHOF: Mr. Chairman, in looking over the amendment last night and this morning, if I properly understand it, I think it expresses the intent of the committee in other words, and I can see no objection to it at this time.

CHAIRMAN VAN DUSEN: Does any delegate desire to have the Bonisteel amendment read again?

MR. DONALD DOTY: Yes.

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: Mr. Bonisteel's amendment is:

[The amendment was again read by the secretary. For text, see above, page 1599.]

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Mr. Bonisteel will say aye. Those opposed will say no.

The amendment is adopted. Are there further amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Mr. Wanger offers the following amendment to section a:

1. Amend page 1, line 6, in the first sentence, after "consist of" by striking out "9" and inserting "7"; so that that sentence will read, "The supreme court shall consist of 7 justices, to be elected on a nonpartisan statewide basis."

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to section a, on which the Chair will recognize Mr. Wanger.

MR. WANGER: Mr. Chairman, members of the committee, I believe it has already been pointed out that there is no good reason why, in creating an odd rather than even number of justices on our supreme court, we must raise the total to 9 rather than lowering it to 7. It has been demonstrated that courts of nearby states do not need as many as 9 justices to do the work adequately and well. We know that 9 instead of 7 justices will cost a great deal more money annually; and we further know that other things being equal, a group of 7 will be able to operate more efficiently and more expeditiously than a group of 9. In closing this argument I would just reiterate the statement that has been made several times on this floor: justice delayed is sometimes justice denied. Let us have a court which can operate as expeditiously and efficiently as possible.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger, on which the Chair will recognize Judge Leibrand.

MR. LEIBRAND: Mr. Chairman and delegates, I would oppose the Wanger amendment. The district plan last night was defeated by the overwhelming majority, as Delegate Pollock would say, of 64 to 62. (laughter) The figure "9" was designed to fit in with the entire district plan, for which I still have high hopes. I would therefore implore the delegates to leave the figure "9" in there, because it fits in with the district plan. Thank you.

CHAIRMAN VAN DUSEN: Mr. Prettie.

MR. PRETTIE: Mr. Chairman, fellow members of the committee, not because of any relevance to the district plan, but because of competent evidence presented before the committee on judicial branch, I most respectfully oppose Mr. Wanger's amendment.

True it is that the decided cases of our supreme court at the present time is not as high as they were during the depression years. At that time, however, the court was not exercising great supervisory power; the court administrator's office did not exist; the administration of the probate court had not been undertaken. We have, in addition to the approximately 250 annual cases, a large case load of motions, interlocutory matters, applications for writs of habeas corpus, and that sort of thing, which did not previously appear in the reports, but which by action of this convention must now be decided by written opinion. We also have provided in this convention for an appeal as of right in every criminal case, and although we are having — or, if our action so determines, we will have — a court of appeals, which will hear some of these appeals as of right from the trial courts in the first instance, it is my firm belief that in the early operations of that court we will find the court of appeals perhaps arriving at opposite decisions, which must be reconciled by the supreme court. We also have by a disputed action, but nevertheless a majority action of this convention, provided for appeals from administrative agencies, which appeals perhaps in the first instance will be going to the trial courts, but which in some instances will find their way to the court of appeals and possibly to the supreme court.

I was not impressed with the argument of practical politics yesterday. I think we could well reduce our court from 9 to 7, disregarding political factors. But I do submit to you that the evidence before the committee on judicial branch, in my opinion, as one member of that committee, clearly established the fact, coupled with the actions already taken in this convention, that we must go in the direction of an enlarged and adequate court with adequate judicial manpower, rather than a step backward into a smaller court. For that reason, and for that reason only, I oppose the Wanger amendment.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Prettie has spoken of evidence presented showing we had to have a court of 9. He has not offered any evidence on the floor of this convention, nor has anyone else. All that has been offered is speculation. I submit that this speculation does not show any probability that the burden on the back of the supreme court judges will be any greater under the convention's proposed plan than it is at the present time.

As a matter of fact, with the creation of the court of appeals, the only probability that is shown is that that burden will be less. None of the rights of appeal which we have created in the judiciary article go directly up to the supreme court. We have created a court of appeals, and undoubtedly other courts or other remedies will be created in that regard. As far as the administration of the court is concerned, we have provided a staff for the court to take care of that particular problem. And so I suggest that the objections to this argument do not have as great weight, by any means, as the argument in favor of this amendment. I would further suggest that even 2 judges on the court, with the facilities and the salary which they must consume, will probably amount to upwards of $100,000 a year, and that this expense is needless. And, finally, once again, that a court of 7 can clearly operate more efficiently and more expeditiously than a court of 9.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Mr. Wanger to strike out the figure "9" before the word "justices" and insert the figure "7", so that section a will then read, "The supreme court shall consist of 7 justices. . . ." Mr. Wanger.

MR. WANGER: I request a division.

CHAIRMAN VAN DUSEN: Mr. Wanger requests a division. Is the demand supported? It is supported. The question is on the amendment offered by Mr. Wanger to reduce the number of supreme court justices from 9 to 7, as provided in section a. Those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Mr. Wanger, the yeas are 35; the nays are 87.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to the body of Committee Proposal 91?

SECRETARY CHASE: Messrs. Cudlip and Bonisteel offer the following amendment to section a:

1. Amend page 1, line 6, at the end of the first sentence, after "basis.", by inserting "Vacancies hereafter created as the result of the death, retirement or resignation of 2 incumbent justices shall not be filled.".

CHAIRMAN VAN DUSEN: The question is on the amendment to section a offered by Messrs. Cudlip and Bonisteel, on which the Chair will recognize Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, members of the committee, like Mr. Wanger and others, I feel that we will not need in the future 9 justices. We have 8 now, as you know. The testimony before our committee indicated, to a large extent, and conversations with other people that are versed in this art suggest that 7 men are enough to handle the work of our high court, especially in view of the fact that we are planning, subject to the will of this convention, for a court of appeals, an intermediate court.

You heard yesterday that 23 states, some of them much larger than Michigan — and most of which, if not all, had intermediate courts — have only 7 men serving on the high court. If we can eliminate 2, money isn't a complete factor, but it is $50,000 plus, a year. I don't think that the work load will demand 9. I like an odd number. I would rather cut it to 7. The Bonisteel-Cudlip amendment doesn't disturb the present justices. In other words, the idea here is that the change would not become effective until through death, resignation or retirement we got down to the level of 7. This is submitted to you for your consideration in view of the debate and comment on this question. Thank you, Mr. Chairman.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel, on which the Chair will recognize Mr. Bledsoe.

MR. DOWNS: I have a motion, Mr. Chairman.

MR. BLEDSOE: I wanted to ask a question.

CHAIRMAN VAN DUSEN: Would you defer your motion temporarily, Mr. Downs.

MR. DOWNS: Yes, I will.

CHAIRMAN VAN DUSEN: You may proceed, Mr. Bledsoe.

MR. BLEDSOE: Mr. Chairman, Mr. Cudlip, before you submitted that amendment, had you taken into consideration the fact that when we passed the administrative article the other day, opening up the question of appeals, that that would also make more appeals to the supreme court possible?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Bledsoe, we did.

MR. BLEDSOE: I mean, had you taken it into consideration before you submitted this?

MR. CUDLIP: I said we did.

MR. BLEDSOE: What was your thinking on that?

MR. CUDLIP: The review by the courts of the decisions of our administrative tribunals? The supreme court, by rule and all, will control this load that it will take under the power we have given it, under the power which it now has. The United States supreme court, as you well know, Mr. Bledsoe, — and others in this room know, too — is very choosy about what it will review. The work is going to be left largely — I imagine by court rule — to the intermediate appellate courts, if they are set up. And if they are not set up this amendment of course isn't valid.

CHAIRMAN VAN DUSEN: Mr. Bledsoe.

MR. BLEDSOE: Just one other question. Then do I take it that you feel that the opening up of the question of fact review by the courts will not increase the court load?

MR. CUDLIP: It might increase the court load at the intermediate level. I think, as I said, that the Supreme Court of Michigan, under rules it now has and rules that we have affirmed, will have the power to control what it does review. And I find in 23 states, many of them larger than Michigan, there is no question in this respect, although I'm not aware of the extent to which they review the decisions of administrative tribunals.

MR. BLEDSOE: Well, at the supreme court level, won't these questions that can be appealed as a matter of right still keep the load up?

MR. CUDLIP: That is a criminal matter — the matter of right appeal. I was referring to the administrative tribunal decisions, and there of course the court will make its own rules. It will also make its own rules with respect to this matter of criminal appeal as a matter of right. But there will be some cases that will get beyond the intermediate court of appeals when we are in the criminal area.

MR. BLEDSOE: Thank you.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Mr. Downs.

MR. DOWNS: Mr. Chairman, I move that we defer discussion of this until we have further consideration of Committee Proposal 96, section d. The reason for the motion, Mr. Chairman, is that that committee proposal specifically deals with the filling of vacancies. I think one reason that we handled this very involved matter today and the last few days was that we separated out the last sentence of the original Hanna amendment dealing with vacancies. I think it would be a more orderly presentation. I'm not speaking for or against the merits of this point, and I wondered if Mr. Cudlip would be willing to defer consideration until that time. The purpose of the motion is not to go into the merits, but to provide what I consider a more orderly handling of the problem.

CHAIRMAN VAN DUSEN: Mr. Downs, this may have occurred during your absence due to illness, but the committee has already considered and passed section d of Committee Proposal 96.

MR. DOWNS: I was referring to coming back on second reading, where I assume that then the amendment could be made, and I think it would be more orderly at that time than at present.

CHAIRMAN VAN DUSEN: Do you make a motion at this point, Mr. Downs?

MR. DOWNS: Yes, I made the motion.

CHAIRMAN VAN DUSEN: The question is on the motion of Mr. Downs that the Cudlip-Bonisteel amendment be, I presume, tabled, Mr. Downs? That's the only form in which your motion could accomplish the purpose which you suggest.

MR. BARTHWELL: Point of order.

MR. DOWNS: Can it not be postponed until a time certain, the time certain being when we get to Committee Proposal 96 on second reading?

CHAIRMAN VAN DUSEN: The Chair thinks not, Mr. Downs. The second reading, after all, will be by the convention, and currently we are sitting in committee of the whole, so that your motion would not be—

MR. DOWNS: Then I will phrase it that the amendment be tabled.

MR. BARTHWELL: Point of order.

CHAIRMAN VAN DUSEN: Will you state your point, Mr. Barthwell?

MR. BARTHWELL: I don't think you can table anything in committee of the whole.

CHAIRMAN VAN DUSEN: The secretary advises, Mr. Downs, that if we lay the amendment on the table, we lay the proposal on the table.

MR. DOWNS: I will withdraw the motion. I did not mean to hold up the proceedings today, Mr. Chairman. May I then be on the order to speak on the amendment in the proper turn?

CHAIRMAN VAN DUSEN: Mr. Downs, you are recognized to speak on the amendment at this time, if you so desire.

MR. DOWNS: All right. I had asked to make the motion out of order. Are there others on the list to speak?

CHAIRMAN VAN DUSEN: Mrs. Butler desires recognition, and her turn comes next, but you are in order, and you may proceed, Mr. Downs.

MR. DOWNS: I see. Mr. Chairman, I do believe that regardless of the merits of this, that this whole matter of filling vacancies is a very key question; and that if we get into this again, I'm afraid it will further confuse the good work we have done today in resolving this very difficult question. I would urge the delegates to vote the amendment down, with the knowledge that on second reading the proponents of course could present it as an amendment to Committee Proposal 96, where I feel it more properly belongs.

CHAIRMAN VAN DUSEN: Mr. Downs, your comments suggest to the Chair that perhaps the secretary should again read the amendment.

SECRETARY CHASE: The amendment reads as follows:

[The amendment was again read by the secretary. For text, see above, page 1600.]

CHAIRMAN VAN DUSEN: Mrs. Butler.

MRS. BUTLER: Mr. Chairman, I would like to ask a question of either Mr. Bonisteel or Mr. Cudlip. Throughout this discussion they have been saying 7 men, 8 men, 9 men. I wonder if this precludes the idea that there might ever be a woman on the supreme court bench? (laughter)

CHAIRMAN VAN DUSEN: Will either of the gentlemen care to answer?

MR. CUDLIP: I yield to Mr. Bonisteel. (laughter)

CHAIRMAN VAN DUSEN: Mr. Bonisteel is recognized.

MR. BONISTEEL: Mr. Chairman and fellow committeemen, I am looking forward to the day when there will be a woman on the bench.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, I speak in favor of this amendment, and I have some evidence to present on the subject. The Michigan joint committee on Michigan procedural revision is the committee from whose report I am going to quote. This committee is the committee which proposed the revised judicature act, which has been adopted, and consists of members appointed by the courts, members by the bar, and members by the legislature.

In a report on Judicial Administration at the Appellate Level, Michigan, published at the law school of the University of Michigan in 1959, this committee says on page 11, under the subject, Enlarging The Court, as follows:

> There are now 8 judges on the supreme court. Would 15 help, or 12, or 11? No state has more than 9 judges on its court.
>
> Only a few states have 9; only 1, Michigan, has 8. The most common numbers are 7 and 5.
>
> While this is not controlling, it reveals a pattern of the American concept of a supreme court, a concept that involves a closely knit unit of wise men, all of whom participate in the decisions of the body. This concept should not lightly be discarded.

And then at page 47, under its recommendations, this committee does recommend an intermediate appellate court. And after having made that recommendation, the committee says:

> The size of the supreme court should be reduced to 5 judges, each serving for a 10 year term, one to be selected each 2 years.
>
> Present judges should remain in office and should be permitted to seek reelection as currently provided and for the terms currently provided.
>
> Vacancies in the court by reasons of death, resignation, or failure to run for reelection should not be filled until the court is of the size of 5.

I think these arguments clearly are applicable to reducing the court in size to 7.

I think this committee probably has heard more evidence and given more consideration to this subject and to the entire problem of judicial administration in Michigan than any other committee of its size in the state in the last 15 years, perhaps even including one of the committees at our convention, because it existed and operated for a much longer period of time. Therefore, I urge you, in the interests of efficient administration and in the interests of saving the taxpayers of Michigan at least $100,000 a year, and in the interest of showing the people that this convention is capable of taking at least one important state body and reducing it in size instead of increasing it in size, to vote in favor of this amendment.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Judge Leibrand.

MR. LEIBRAND: Mr. Chairman, may I inquire of Mr. Cudlip?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Leibrand.

MR. LEIBRAND: Mr. Cudlip, reference has been made to section d of Committee Proposal 96, which was passed by the committee of the whole on March 8 that provides:

> When a vacancy occurs in the office of an elected judge of any court of record, it shall be filled at a general or special election according to law. The supreme court is empowered to authorize persons who have served as judges and have voluntarily retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified.

My inquiry is this: does your amendment negate or defeat the intent of section d of Committee Proposal 96?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, Judge Leibrand, I would simply say this: that the idea is to get this court down to 7 in the normal course of events, as described in the proposed amendment. And if section d of Committee Proposal 96 is in conflict with that — and I don't see that it is, offhand — why then there would have to be a reconcilement.

CHAIRMAN VAN DUSEN: Mr. Leibrand.

MR. LEIBRAND: Mr. Chairman, may I have the Cudlip-Bonisteel amendment read again, please?

CHAIRMAN VAN DUSEN: The secretary will read the amendment.

SECRETARY CHASE: The following is the amendment:

[The amendment was again read by the secretary. For text, see above, page 1600.]

MR. LEIBRAND: Thank you. I feel there is a decided conflict, Mr. Chairman.

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: On further reflection, may I say if that is a bothersome point, section d of Committee Proposal 96, which deals and treats with the subject that Judge Leibrand adverted to, if there is any inconsistency brought about, we can simply say at the proper time, "except as otherwise provided in this constitution," and that would exclude the amendment if it were adopted.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: I think Mr. Cudlip has just answered my question. He has stated that the idea of this amendment is to get the bench down to 7. I wonder, in view of that, if this amendment is even in order at this point, seeing as we just voted down a straight vote for a 7 member bench.

CHAIRMAN VAN DUSEN: The Chair will rule that while your point is not without merit, Mr. Mahinske, the amendment is in order.

MR. MAHINSKE: Then I would like to direct a question to Mr. Cudlip or Mr. Bonisteel. In view of the fact that the idea here is to reduce the bench to 7, just what is the advantage that we gain by appointing an extra man and then waiting for 2 to disqualify themselves, and then coming up with a 7 member bench, aside from all the arguments we have heard about 7 people being a closer knit family, and so forth, from the other end of the room?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman and members of the committee, it would be entirely agreeable if someone wants to amend the 9 to 8 in the language we have already adopted. We went on the premise that it was 9, and we wanted to cut it down. We have no objection if anybody wants to change the 9 to 8 in the language already adopted, and then the language would be from 8 to 7.

CHAIRMAN VAN DUSEN: Mr. Mahinske.

MR. MAHINSKE: Then the effect of adopting this amendment would be appointing an additional man to the bench, and then waiting for 2 to eliminate themselves through one course or another?

MR. CUDLIP: Yes, Mr. Mahinske, unless someone makes another amendment.

MR. MAHINSKE: Well, I would be opposed to the amendment on this basis. It's principally a 7 member bench amendment again.

CHAIRMAN VAN DUSEN: Mr. Everett.

MR. EVERETT: Mr. Chairman, fellow delegates, I support the Cudlip-Bonisteel amendment. It has become unpopular here to admit that any of our votes have been dictated by political expediency, but I'm going to admit that I voted to raise this from 8 to 9 because I didn't see how we could put a man out of office, which is what we were going to do if we cut it to 7. I think Mr. Bonisteel and Mr. Cudlip have offered us a way out of our dilemma.

I think the facts, with an intermediate court of appeals, do not justify 9, and this is a means of getting there gradually without offending anybody and without stepping in the way of those who have already won their place by a vote of the people. I don't think we would have a right to eliminate them by a constitutional act when they have won their office through a vote of the people, and this way we are not doing it.

I think they have given us the answer, and I am certainly going to vote for it.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Miss Donnelly.

MISS DONNELLY: For the reasons most succinctly stated by Mr. Everett, I too would like to support the amendment. But inasmuch as I basically think it should be 7, if it's proper at this time I would like to make the amendment that Mr. Cudlip suggested, to change the numbers from 9 to 8 and from 2 to 1, and they will get it to 7 by reducing them this way.

CHAIRMAN VAN DUSEN: Miss Donnelly, the Chair would request that if you desire to make that amendment, you submit it to the secretary in writing.

MISS DONNELLY: I have a copy of the other one. It's just a substitution of the numbers.

CHAIRMAN VAN DUSEN: Your amendment, Miss Donnelly, would be to strike "9" and insert "8"?

MISS DONNELLY: Which is what we presently have, yes. This is reducing our supreme court to 7 in a very proper, dignified and considerate form.

CHAIRMAN VAN DUSEN: Miss Donnelly, would you withhold that amendment for the moment? You see, the amendment offered by Messrs. Cudlip and Bonisteel does not touch the first sentence of Committee Proposal 91, which would necessarily be amended by your amendment. Therefore, your amendment is partly to the proposal and partly to the amendment. If you will withhold it, it will be in order in due course.

MISS DONNELLY: All right. I'm sorry, I didn't see it written. I thought it was in effect.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Mr. Mahinske.

MR. MAHINSKE: As I understand it, the main argument that we hear from most people here for having a 7 member bench is the fact that we have created or are going to create an intermediate court of appeals which will cut the work load out from the supreme court. I think that Mr. Wanger was the loudest opponent to our permitting the supreme court to write or in fact ordering the supreme court to write their reasons for denial of an appeal. He claimed that this would overburden them, would put a lot of extra work on them, and so forth. Now, his argument would pertain to the 7 member bench. I just wonder what would happen to a 7 member bench writing all these statements of fact.

The argument has been made that the intermediate appellate court will take away a lot of the present work load of the supreme court. I don't feel that this is what is going to happen. We have given an absolute right of appeal in all criminal matters, and the presumption is that this would be to the appellate court. Now, many of these cases are going to find themselves out of the appellate court and up to the supreme court that wouldn't necessarily be there today. At the same time, we have liberalized the scope of review in the administrative tribunal area. The obvious assumption is that these appeals or reviews will go to the appellate court. For the very same reason, a lot of these reviews will find themselves out of the appellate court up into the supreme court. Fourthly, we have permitted the supreme court on solemn occasions, whatever this amounts to, to write opinions on nonjusticiable issues. Now, this is going to create more work for the supreme court, whether it be a 7 or 9 member bench.

All 4 of these items, the 3 that we have put through and the 1 that we are anticipating, as I see it, direct more work to the supreme court. We must also remember that in a lot of these criminal matters where there is an absolute right of appeal, there may be a direct certification of the record to the supreme court, bypassing the appellate court. Now, these are appeals that will go to the supreme court that would not necessarily go there today, for the simple reason that there would be no right of appeal.

For these reasons, and if you're talking about work loads, I think that the supreme court, with 9 members and with an intermediate court of appeals, will have more work under our proposed constitution than they have today. And this would, in and of itself, justify a 9 member bench, and I think possibly put our docket back with the 7 member bench. I would still be opposed to decreasing the number to 7.

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: I would simply like to remind the committee of the figures that Mr. Danhof gave you the other day from the poll of the lawyers of this state. On many of the issues upon which the lawyers were polled the votes were close. There were several votes on a single issue that were within, with reference to each other, no more than 50 per cent plurality. But on this particular one, with a little over 5,000 lawyers responding to the poll, 4,286 of the members of the bar of this state said that they thought we needed a 9 member court. And 347, a very small figure next to this one, wanted to retain it at the present 8. And 321 had some other number, which would include, 5, 7, 11 or any other number. So even if we assumed a majority of the other choices were for the 7 man court, less than 321 out of over 5,000 lawyers wanted to go in the direction of the Cudlip-Bonisteel amendment at this time.

I'm a little bit surprised to hear people talking about the judicial committee making decisions of this kind on the basis of political expediency. Because I thought that this was a committee that we had agreed from the outset was of such a caliber that there was very little political expediency practiced. And it has been indicated on the floor from the very beginning that we tried to stay away from making decisions on that basis. I trust that we will continue that same spirit into the convention, and that we will not now get into a round robin of soul baring confessions about how we voted for political expediency.

CHAIRMAN VAN DUSEN: Mr. Wanger.

MR. WANGER: Mr. Chairman, I desire to direct a question to Mr. Ford.

CHAIRMAN VAN DUSEN: If the gentleman cares to answer.

MR. WANGER: With respect to this bar poll, did the members of the bar on this questionnaire have an opportunity to vote on the specific number 7, or the specific number 5?

CHAIRMAN VAN DUSEN: Mr. Ford.

MR. FORD: The specific question is, "How many members should the supreme court have?" I should say that there are several questions concerning the supreme court grouped together, "8 members; 9 members; or any other number?" My recollection of this is that on each one of them, and I guess it's true as you look at it, on every question that was asked in the poll you were given choices, but you were also given an opportunity to express something beyond the choice that was presented by the committee.

MR. WANGER: Thank you. That clarifies the situation to me. It is very clear that the members of the bar were voting really on the difference between an even numbered bench and an odd numbered bench, and the question of reducing the court in size to 7 or 5 was not directly before them; only indirectly, if at all, by the little line and the word "other," which allowed them to express other preference.

CHAIRMAN VAN DUSEN: The question is on the amendment offered by Messrs. Cudlip and Bonisteel to section a of Committee Proposal 91 to insert after the first sentence thereof the words, "Vacancies hereafter created as the result of the death, retirement or resignation of 2 incumbent justices shall not be filled." Mr. Stevens.

MR. STEVENS: Mr. Chairman, may I ask Mr. Cudlip a question, please?

CHAIRMAN VAN DUSEN: If the gentleman cares to answer, Mr. Stevens.

MR. STEVENS: Mr. Cudlip, when the proposal was read by the secretary in the beginning, I got the impression that this was a temporary thing; that we would elect 9 justices, but in case of resignation, death and so forth, the vacancy would not be filled until the end of the term. Now, from the discussion, it appears to me that that isn't the correct interpretation. Is it the idea that this would be a permanent reduction?

CHAIRMAN VAN DUSEN: Mr. Cudlip.

MR. CUDLIP: Mr. Chairman, Harold, yes, a permanent reduction.

MR. STEVENS: Thank you.

CHAIRMAN VAN DUSEN: Those who are in favor of the amendment offered by Messrs. Cudlip and Bonisteel will say aye. Those opposed will say no. The Chair is in doubt. Those in favor of the amendment offered by Mr. Cudlip and Mr. Bonisteel will vote aye. Those opposed will vote no. The question is on the amendment offered by Messrs. Cudlip and Bonisteel. Those who are in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the amendment offered by Messrs. Cudlip and Bonisteel, the yeas are 46; the nays are 63.

CHAIRMAN VAN DUSEN: The amendment is not adopted. Are there further amendments to Committee Proposal 91? If not, the proposal will pass.

Committee Proposal 91, as amended, is passed. The committee will proceed to Committee Proposal 92.

SECRETARY CHASE: From the committee on judicial branch, by Mr. Danhof, chairman, **Committee Proposal 92,** A proposal pertaining to a court of appeals. Amends article VII.

Following is Committee Proposal 92 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE COURT OF APPEALS SHALL CONSIST INITIALLY OF 9 JUDGES WHO SHALL BE NOMINATED AND ELECTED IN THE SAME MANNER AS THE JUSTICES OF THE SUPREME COURT. THE SUPREME COURT MAY PRESCRIBE BY RULE THAT THE COURT OF APPEALS MAY SIT IN DIVISIONS, THE TERMS OF COURT AND THE TIMES AND PLACES THEREOF. EACH SUCH DIVISION SHALL CONSIST OF NOT FEWER THAN 3 JUDGES. THE LEGISLATURE MAY BY LAW INCREASE THE NUMBER OF JUDGES COMPRISING THE COURT OF APPEALS.

Sec. b. INITIALLY, 3 JUDGES SHALL BE ELECTED FOR A TERM OF 2 YEARS, 3 JUDGES FOR A TERM OF 4 YEARS, AND 3 JUDGES FOR A TERM OF 6 YEARS. THEREAFTER, THE TERM OF OFFICE SHALL BE 6 YEARS. THE TIME OF ELECTION AND THE ORDER OF ROTATION SHALL BE PROVIDED BY LAW.

Sec. c. THE JURISDICTION OF THE COURT OF APPEALS SHALL BE PRESCRIBED BY LAW AND THE PRACTICE AND PROCEDURE THEREIN SHALL BE AS PROVIDED BY SUPREME COURT RULE.

Mr. Danhof, chairman of the committee on judicial branch, submits the following reasons in support of Committee Proposal 92:

This proposal integrates the structure of a court of appeals heretofore created into the district plan for the election of justices. It provides for the election of 9 judges of the court of appeals from the same districts as the justices of the supreme court. It is contemplated that one division of the court of appeals would serve Wayne county; one division would serve judicial districts 2, 3 and 4 comprising the southeasterly ¼ of the state; and one division would serve judicial districts 5, 6 and 7 comprising the remainder of the state including the upper peninsula.

This plan is largely adapted from a presentation made to this committee by Justice Theodore Souris. This presentation was copiously documented with a study of the case load of the supreme court for a 4 year period. The districts proposed in this plan for the appellate court contemplated one such court to serve Wayne connty; one the eastern half of the lower peninsula, and another the western half of the lower peninsula and the upper peninsula. This plan was revised to bring it more nearly into correspondence with the case load and to integrate it with the 7 judicial districts of the state established for nomination and election of the justices of the supreme court.

A study of the potential case load resulting from the granting of appeals as of right and other matters that might be expected to reach such a court indicates an estimated annual case load for each division of this court of approximately 600 cases. The proposal further provides for initial election of the judges of this court; 3 judges for 2 years; 3 for 4 years; and 3 for 6 years; and thereafter for terms of 6 years. Flexibility is provided for the legislature to determine by law the time of election and the order of rotation.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

CHAIRMAN VAN DUSEN: For an explanation of section a of Committee Proposal 92, the Chair will recognize the chairman of the committee on judicial branch, Mr. Danhof.

MR. DANHOF: Mr. Chairman and members of the committee, section a provides for the manpower to operate the court of appeals. The committee has recommended the number of 9. At the time that we were considering a court of appeals, the question was brought up as to whether or not there should be an independent judiciary for the court of appeals, or whether perhaps the manpower of the supreme court and the circuit bench could be utilized. It was determined by a vast majority of the committee that if a court of appeals were to be established, it should have independent judiciary. Basically, the reason was this. We decided that if you utilized circuit judges, this would decrease the number of circuit judges available on the trial level, and would of necessity require an increase of circuit judges. Secondly, if a circuit judge were to sit for a particular period of time, he would naturally be called upon to rule upon decisions of his brethren on the bench, and perhaps some within his own circuit. When we inquired of circuit judges who appeared before us in this regard, they seemed to favor an independent judiciary.

I quite realize that at the time the committee adopted the first sentence to the section, the supreme court was to be selected by the district plan. By amendment taken in this committee of the whole to Committee Proposal 91, this is not now the case. My own personal conviction is that the first sentence of section a is still appropriate and should still be retained.

The second sentence prescribes that the supreme court by rule may designate that the court of appeals shall sit in divisions; the terms of the court; and the times and places thereof. This is procedure. It sets up the manner in which the court will operate, and provides that it may move around the state, as we anticipate, to hear various appeals. We provide that each such division shall consist of not fewer than 3 judges. This is to make 3 divisions of 3 judges each at the initial stage.

The last sentence is self explanatory. If the work load becomes such that more judges are needed, the legislature may by law increase the number of judges.

Section c, if you want to look ahead and try to anticipate questions, provides that the jurisdiction shall be as prescribed by law and the procedure as prescribed by supreme court rule. I will yield at this time for questions.

CHAIRMAN VAN DUSEN: Are there any amendments to section a of Committee Proposal 92?

SECRETARY CHASE: There are none on file, Mr. Chairman.

CHAIRMAN VAN DUSEN: If not, the section will pass.

Section a is passed. The secretary will read section b.

SECRETARY CHASE: Section b:

[Section b was read by the secretary. For text, see above.]

CHAIRMAN VAN DUSEN: Mr. Danhof.

MR. DANHOF: This, in essence, members of the committee and Mr. Chairman, is a scheduling provision to get the court operating. We leave to the legislature how and when the rotation shall commence, and the time of the election, and so forth. We provide for a term of 6 years. It was the considered opinion of the committee that if an 8 year term were in order for the supreme court, as we have provided, that 6 years would be sufficient for the court of appeals, as we feel there

Sec. c. The jurisdiction of the court of appeals shall be prescribed by law and the practice and procedure therein shall be as provided by supreme court rule.

SECRETARY CHASE: Mr. President, the committee of the whole has also had under consideration **Committee Proposal 91,** A proposal pertaining to the supreme court. The committee of the whole reports the proposal back to the convention with several amendments thereto, recommending that the amendments be agreed to and the proposal as thus amended be adopted.

[Following are the amendments recommended by the committee of the whole:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.".

2. Amend page 1, line 14, after "assistants" by inserting "of the supreme court".

3. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court.".

4. Amend page 2, line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove a judge.".

5. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal".

6. Amend page 2, line 15, after "control of" by inserting "the preparation of its budget recommendations and".

7. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof".

8. Amend page 2, line 25, by striking out all of section g.]

The first amendment is the amendment offered by Mr. Danhof:

[The amendment was read by the secretary. For text, see above.]

PRESIDENT NISBET: The question is on the amendment of Mr. Danhof. Mr. Boothby.

MR. BOOTHBY: Mr. President, ladies and gentlemen of the convention, I would like to move that this question be divided, and that section a and section g each be voted on separately.

PRESIDENT NISBET: Mr. Boothby, the Chair is informed that's going to be done anyway the way they are being read to the convention. The question is on the Danhof amendment.

DELEGATES: Division.

PRESIDENT NISBET: A division has been asked for. Is the demand seconded? There is a sufficient number up. Those in favor of the Danhof amendment—Mr. Habermehl.

MR. HABERMEHL: Mr. President, I believe that I must rise to oppose the Danhof amendment. I believe that what has happened is just what I spoke to last night. I believe if we adopt this amendment that we really will have something to explain to our constituents.

Prior to the convening of this convention I'm sure each one of us was aware of the criticism that was directed toward the present method of selection of the supreme court. Every organization, every group, the press, practically unanimously, ridiculed the fiction of maintaining a partisan nomination and a nonpartisan election of supreme court justices. All of the argument that we heard from any of the organizations particularly interested in the convening of this convention was directed to this matter. So we maintain the partisan nomination of supreme court justices. All of the argument that we heard directed here on the floor to the statewide campaign that a supreme court justice must make, the expensive campaign, the obligation that that candidate may incur which may affect his judicial decisions, because of the necessity of getting support from organized groups in order to hope to be elected, apparently is to no avail. We maintain a statewide nonpartisan election of justices.

We have added a few interesting complications. We now would permit the incumbent justice, regardless of what his politics might be or how he was originally elected, to nominate himself; and he would bear the designation on the ballot of supreme court justice. Both parties could then nominate another candidate—and this is not at all inconceivable, contrary to what Mr. Danhof says. I can think of one instance right now where it could happen. We would have at least 3 candidates then—not for nomination, but for election. In addition to that, any lawyer that might want to brag at some time that he was a candidate for supreme court justice could arrange to nominate himself by circulating petitions. The vote that the people of the state would have then on the election of this justice would be 1 vote only, the final election. If we had more than 2 candidates, a minority of the people of the state would elect the supreme court justice. That minority could in some instances be as low as 25 per cent of the people of the state who would elect the justice.

Now, what sort of effect would that have upon the incumbent justice? His party, by threatening to withhold the party nomination, could certainly affect his decisions while he was on the bench. It would be a most effective threat.

If we aren't going to pay any attention to the public opinion that has been expressed upon this question, I would direct the attention of every delegate to a preconvention poll that each one of you filled out and sent back in. At least, a majority of you did so. In that, by a great majority, these same criticisms were voiced by you as individual delegates. So now are we going to reverse our own thinking, even if we pay no attention to public opinion?

If you cannot buy this present amendment, if you do not believe that this is the proper method of selection of supreme court justices, regardless of what plan you might favor, you would in all conscience be compelled to vote against concurrence in this amendment. For if you concur in this amendment, you have locked it in so far as this reading is concerned and the matter will be referred to style and drafting. If you are not convinced then that this is the best method of selecting supreme court justices, I strongly urge you vote no on concurrence with this amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Wanger.

MR. WANGER: Mr. President, members of the convention, we are asked here to vote against what the committee adopted, but we are not given something better to put in its place. It seems apparent that this is designed to get us back by nonconcurrence with the amendments of the committee of the whole to the district plan. I urge you to vote for the committee of the whole's amendment, and I demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays are demanded. Is the demand seconded? There is a sufficient number up. Judge Leibrand.

MR. LEIBRAND: Mr. President, a parliamentary inquiry. If we do not concur in the recommendation of the committee of the whole by voting nay, then as I understand it we are left with section a of the original committee report, is that correct?

PRESIDENT NISBET: That is correct. Mr. Brown.

MR. G. E. BROWN: Mr. President, I would merely join the others that have spoken and urge nonconcurrence in the committee report and a nay vote on this proposition.

PRESIDENT NISBET: The question is on the amendment. Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, I think again the issue is squarely before us. Mr. Wanger has stated it very succinctly, very quickly, and so will I. I am not sure that the amendment we adopted in the committee of the whole is the ultimate answer. But a vote of nonconcurrence will in effect leave you basically with nothing, unless you go back to the district plan in section g. We have heard all of the arguments pro and con for not 1 day, but at least 4. We know everything about all plans—appointive, elected, by any means or methods whatsoever. I would urge that we vote concurrence in the report of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Young.

MR. YOUNG: I have a point of parliamentary inquiry. Judge Leibrand says that a vote nay on the present question would take us back to section a. I would like to know if section a as proposed by the committee is in fact the district plan.

DELEGATES: No. No.

MR. YOUNG: Well, what is it?

PRESIDENT NISBET: Section a is Committee Proposal 91, Mr. Young. The Chair recognizes Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, I would urge a no vote, for about the same reason as Delegate Wanger urged a yes vote. That is, he said if we throw this out we are right back to what the committee reported, which I think is where the majority of us want to be. Because if we have section a, then we set the stage for section g, which is the district plan. Now, on every vote that has been taken there have been more of us that wanted the district plan—and when I say "us," I say that advisedly, reading between the lines—than on any other plan that has been offered. And yet we have come short of getting it into actual operation. I think the very simple thing now is to vote no on the amendments that were made to section a and to section g, and then we will have what the majority of us have wanted, which is the district plan. I certainly would urge that we vote no on the pending amendment to section a.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: Mr. President, members of the convention, I have been brought somewhat reluctantly around to the position where it would leave no doubt in anyone's mind. I would urge wholeheartedly that we vote in favor of the committee of the whole's recommendation, affirming its action. I have already stated my fears and doubt before, but I feel that this is the best alternative that has been offered and the best way to resolve the problem.

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, 2 parliamentary inquiries. One, section a provides simply for a supreme court. Is that correct? A vote of nonconcurrence would leave section a as reported by the committee intact?

PRESIDENT NISBET: That is correct.

MR. HABERMEHL: The second question, if this amendment is not concurred in, is the committee proposal subject to further amendments?

PRESIDENT NISBET: Surely.

MR. HABERMEHL: Then this could not possibly have the effect that Mr. Wanger said.

PRESIDENT NISBET: Mr. Wanger?

MR. WANGER: Mr. President, I don't wish to abuse the privilege of speaking before the convention, which is only once, so I will pass.

PRESIDENT NISBET: Miss Donnelly.

MISS DONNELLY: I would like to support and urge that all support the committee proposal, section a, as amended by Mr. Danhof, after many hours of great work. To say that we do not concur will leave section a as it is, and then will get us eventually to section g as it is, which again will put you back to the district plan. Now, the issue is: do you want the district plan, more or less? And section a as written by this compromise under Mr. Danhof's name, with the support of numerous people in helping him draft it, is the best compromise that this committee has been able to reach. I therefore urge that we support the committee of the whole, and I move the previous question.

MR. MAHINSKE: A parliamentary inquiry, Mr. President.

PRESIDENT NISBET: Mr. Mahinske.

MR. MAHINSKE: There has been much talk here that if there is a no vote adopted on the recommendations of the committee of the whole, we will be back to section a as submitted by the committee. I don't know that this is exactly true, because certain amendments were adopted to section a as supported by the committee, and then the Danhof amendment was adopted as a substitute for section a, as amended. Now, if the vote, in essence, is against the Danhof amendment here, are we going back to section a as submitted by the committee, or as amended as submitted by the committee?

PRESIDENT NISBET: We are going back to the proposed section a as submitted by the committee on the green sheet. The previous question has been demanded. Mr. Farnsworth.

MR. FARNSWORTH: Point of information, Mr. President. I am somewhat confused. Isn't it true, Mr. Secretary, that it was the Ford amendment, which we will get to eventually, that kicked out section g, and isn't there confusion that exists here at the moment, and there are people on this floor perhaps that think by nonconcurrence in the committee report they will automatically have the district plan back in?

SECRETARY CHASE: The situation, as the secretary understands it, at present is this. We are voting now only upon the question of concurring in the recommendation of the committee of the whole to adopt the amendment which was adopted in committee of the whole this morning by a vote of 82 to 46. The question on concurring in the recommendation of the committee of the whole as to section g will come up later.

PRESIDENT NISBET: The previous question has been demanded. Is that demand seconded? There is a sufficient number up. The question now is: shall the previous question be put? Those in favor say aye. Those opposed, no.

The previous question is ordered. The question is now on the Danhof amendment. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—72

Allen	Farnsworth	McLogan
Andrus, Miss	Faxon	Millard
Austin	Follo	Murphy
Baginski	Ford	Nisbet
Balcer	Garvin	Nord
Barthwell	Greene	Norris
Bentley	Gust	Ostrow
Binkowski	Hanna, W. F.	Page
Bledsoe	Hart, Miss	Perlich
Bonisteel	Hatch	Pollock
Brown, T. S.	Hatcher, Mrs.	Rajkovich
Buback	Hodges	Romney
Cudlip	Hood	Sablich
Cushman, Mrs.	Judd, Mrs.	Seyferth
Danhof	King	Snyder
Davis	Krolikowski	Staiger
Donnelly, Miss	Kuhn	Stamm
Doty, Dean	Lawrence	Stopczynski
Douglas	Lesinski	Suzore
Downs	Mahinske	Van Dusen
Durst	Marshall	Wanger
Elliott, A. G.	Martin	Wilkowski
Elliott, Mrs. Daisy	McCauley	Yeager
Everett	McGowan, Miss	Young

Nays—61

Anspach	Howes	Richards, J. B.
Batchelor	Hoxie	Richards, L. W.
Beaman	Hubbs	Rood
Blandford	Hutchinson	Rush
Boothby	Iverson	Shackleton
Brake	Karn	Shaffer
Brown, G. E.	Kirk, S.	Shanahan
Butler, Mrs.	Knirk, B.	Sharpe
Conklin, Mrs.	Koeze, Mrs.	Sleder
Dehnke	Leibrand	Spitler

Dell	Leppien	Stafseth
DeVries	Lundgren	Stevens
Erickson	McAllister	Thomson
Figy	Pellow	Tubbs
Finch	Perras	Turner
Gadola	Plank	Tweedie
Goebel	Powell	Upton
Gover	Prettie	White
Habermehl	Pugsley	Wood
Haskill	Radka	Woolfenden
Higgs		

SECRETARY CHASE: On the question of concurring in the amendment to section a, as recommended by the committee of the whole, the yeas are 72; the nays are 61.

PRESIDENT NISBET: The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment recommended by the committee of the whole:

2. Amend page 1, line 14, after "assistants" by inserting "of the supreme court"; so the language will there read, "The supreme court shall appoint an administrator of the courts and other judicial assistants of the supreme court as shall be deemed necessary. . . ."

PRESIDENT NISBET: The question is on the amendment as recommended by the committee of the whole. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment recommended by the committee of the whole:

3. Amend page 1, line 16, after "shall" by striking out the balance of the section and inserting "perform such administrative duties as may be assigned by the court."; so that the language will then read, "The administrator shall perform such administrative duties as may be assigned by the court."

PRESIDENT NISBET: The question is on the adoption of the amendment as reported by the committee of the whole. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment:

4. Amend page 2, line 3, after "rule" by changing the period to a comma and inserting "it being provided that the supreme court shall not have the power to remove a judge.".

PRESIDENT NISBET: The question is on concurring in the amendment. Mr. Everett.

MR. EVERETT: Mr. President, fellow delegates, I voted for this amendment in committee of the whole, and I intend to vote for it here. But at the time of the debate there were comments made by at least one of the proponents of the amendment which I think should not go unchallenged. If you will recall, we had before us a proposed amendment which said that the supreme court could not suspend or remove other judges. By amendment within committee of the whole, we struck out the word "suspend," which I think most of us recognize as an implication that the supreme court could suspend but could not remove. The comment was made to the effect that this meant that the supreme court could not conduct a hearing before arriving at this decision. Now, to me at least, there's nothing in this language which implies that there could not be a hearing. As a matter of fact, I would find it unthinkable that the supreme court would suspend a judge or advocate his removal without a hearing. I simply want the record to show that in supporting this amendment and voting for it, I do not do so for the reasons advanced by at least one of its sponsors.

PRESIDENT NISBET: The question is on the adoption of the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted. The next amendment.

SECRETARY CHASE: The next amendment:

5. Amend page 2, line 11, after "decision" by inserting "and reasons for each denial of leave to appeal"; so that the language will there read:

> Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal.

PRESIDENT NISBET: The question is on the adoption of the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

6. Amend page 2, line 15, after "control of" by inserting "the preparation of its budget recommendations and"; so that the language will there read:

> The supreme court may appoint and remove its staff and shall have general supervision of the staff of the court and control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose . . .

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

7. Amend page 2, line 21, after "fund.", by striking out "No justice of the supreme court" and inserting "Neither the supreme court nor any justice thereof"; so that that sentence will read, "Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein."

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Those opposed, no.

The amendment is adopted.

SECRETARY CHASE: The next amendment:

8. Amend page 2, line 25, by striking out all of section g.

PRESIDENT NISBET: The question is on concurring in the amendment. Mr. Leibrand.

MR. LEIBRAND: I feel that I cannot concur with the report of the committee of the whole, and accordingly I shall vote nay.

PRESIDENT NISBET: The question is on concurring in the amendment. Those in favor will say aye. Those opposed, no.

MR. LEIBRAND: I would ask for a roll call vote.

PRESIDENT NISBET: A roll call vote has been requested. Is the demand seconded? There is a sufficient number up. Those in favor of the amendment will vote aye. Those opposed will vote no. This is a roll call vote. Mr. King.

MR. KING: Mr. President, would you restate the question? This is somewhat confusing. I think it would be worthwhile if you would restate the question for the benefit of the delegates.

PRESIDENT NISBET: The question is on concurring in the amendment. Do you want the amendment read, Mr. King?

MR. KING: Just in capsule form. The amendment is to strike.

SECRETARY CHASE: The amendment as proposed by the committee of the whole is to strike out all of section g.

MR. BLEDSOE: Would you have it read, Mr. President?

MR. FARNSWORTH: Point of information, Mr. President.

PRESIDENT NISBET: Mr. Farnsworth.

MR. FARNSWORTH: Mr. President, again I'm somewhat confused. We are being asked now to concur or not to concur with the committee report, which was the Ford amendment to strike out section g. Now, am I right in assuming that if we do not concur, we will then have a judicial article with 2 means of selecting a supreme court?

PRESIDENT NISBET: Is that right, Mr. Chase?

SECRETARY CHASE: The convention has agreed, on a roll call vote, to the adoption of the amendment to section a which provides for the selection of justices; and presently the question is on concurring in the recommendation of the committee of the whole that section g be stricken from the proposal.

PRESIDENT NISBET: Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—82

Allen	Farnsworth	Norris
Andrus, Miss.	Faxon	Ostrow
Austin	Follo	Page
Baginski	Ford	Pellow
Balcer	Garvin	Perlich

Barthwell	Greene	Perras
Beaman	Hanna, W. F.	Pollock
Bentley	Hart, Miss	Rajkovich
Binkowski	Hatch	Romney
Bledsoe	Hatcher, Mrs.	Sablich
Bonisteel	Hood	Seyferth
Brown, T. S.	Judd, Mrs.	Snyder
Buback	King	Staiger
Butler, Mrs.	Krolikowski	Stamm
Conklin, Mrs.	Lawrence	Stopczynski
Cudlip	Leppien	Suzore
Cushman, Mrs.	Lesinski	Thomson
Danhof	Mahinske	Tubbs
Davis	Marshall	Tweedie
DeVries	Martin	Upton
Donnelly, Miss	McCauley	Van Dusen
Doty, Dean	McGowan, Miss	Walker
Douglas	McLogan	Wanger
Downs	Millard	Wilkowski
Durst	Murphy	Woolfenden
Elliott, A. G.	Nisbet	Yeager
Elliott, Mrs. Daisy	Nord	Young
Everett		

Nays—50

Anspach	Haskill	Radka
Batchelor	Higgs	Richards, J. B.
Blandford	Howes	Richards, L. W.
Boothby	Hoxie	Rood
Brake	Hutchinson	Rush
Brown, G. E.	Iverson	Shackleton
Dehnke	Karn	Shaffer
Dell	Kirk, S.	Shanahan
Doty, Donald	Koeze, Mrs	Sharpe
Erickson	Kuhn	Sleder
Figy	Leibrand	Spitler
Finch	Lundgren	Stafseth
Gadola	McAllister	Stevens
Goebel	Plank	Turner
Gover	Powell	White
Gust	Prettie	Wood
Habermehl	Pugsley	

SECRETARY CHASE: On the question of agreeing to the recommendation of the committee of the whole to strike out section g, the yeas are 82; the nays are 50.

PRESIDENT NISBET: The amendment is adopted.

SECRETARY CHASE: Miss Donnelly, Messrs. Leibrand and McAllister offer the following amendment:

1. Amend page 2, line 3, in the amendment, after "remove" by inserting "or suspend".

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye. Those opposed will say no.

The amendment is not adopted. The next amendment.

SECRETARY CHASE: That's all of the amendments on file, Mr. President.

PRESIDENT NISBET: If there are no further amendments, **Committee Proposal 91,** as amended, is referred to the committee on style and drafting. (applause)

Following is Committee Proposal 91 as amended and referred to the committee on style and drafting:

The committee recommends that the following be included in the constitution:

Sec. a. The supreme court shall consist of 9 justices to be elected on a nonpartisan statewide basis. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate 1 candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner as prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by qualified electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.

Sec. b. One justice of the supreme court shall be selected by the court as its chief justice in the manner and for the term provided by the rules of the court. He shall perform such other duties as may be required by the court. The supreme court shall appoint an administrator of the courts and other judicial assistants of the supreme court as shall be deemed necessary to aid in the administration of the courts in the state. The administrator shall perform such administrative duties as may be assigned by the court.

Sec. c. The supreme court shall have: a general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; appellate jurisdiction as provided by supreme court rule, it being provided that the supreme court shall not have the power to remove a judge.

Sec. d. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts in the state. The distinctions between law and equity proceeding shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. e. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. f. The supreme court may appoint and remove its staff and shall have general supervision of the staff of the court and control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff, except that the salaries of the justices of the supreme court shall be established by law. All fees, perquisites and income collected by the clerk shall be turned over by him to the state treasury and credited to the general fund. Neither the supreme court nor any justice thereof shall exercise any other power of appointment to public office, except as otherwise provided herein.

SECRETARY CHASE: The committee of the whole, Mr. President, has also had under consideration **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state. It has considered several amendments thereto, and has come to no final resolution thereon. This completes the report of the committee of the whole.

PRESIDENT NISBET: The Chair recognizes Mr. Hoxie.

MR. HOXIE: Mr. President, a point of personal privilege.

PRESIDENT NISBET: Will you state it.

MR. HOXIE: This is an Ode to the District Plan.

When things go wrong, as they sometimes will,
When the road you're trudging seems all uphill,
When the funds are low and the debts are high,
And you want to smile, but you have to sigh,
When care is pressing you down a bit,
Rest if you must, but never quit.

Life is queer with its twists and turns,
As every one of us sometimes learns,
And many a failure turns about
When you might have won had you stuck it out.
Don't give up though the pace seems slow,
You may succeed with another blow.

Often the goal is nearer than
It seems to a faint, faltering man.
Often the straggler has given up
When he might have captured the victor's cup.
And he learned too late when the night slipped down
How close he was to the golden crown.

ONE HUNDRED SIXTEENTH DAY

Friday, April 6, 1962, 9 o'clock a.m.

PROCEEDINGS

PRESIDENT NISBET: The convention will please **come to order.**

Our **invocation** this morning is to be given by one of our own delegates, Mr. Julius Sleder.

MR. SLEDER: Our heavenly Father, we thank Thee this day for the opportunity Thou hast given us of being able to serve as a delegate to this constitutional convention. We thank Thee for the opportunity Thou hast brought before us; the opportunity of knowing and associating with dedicated men and women, dedicated to a better life, a better state and a better government for all. We ask Thy guidance to fully explore these opportunities. We ask Thy guidance to develop these opportunities. We ask Thy guidance for the fulfillment of these opportunities. We also ask Thee to guide and direct each of us, and we pray that we may be more considerate and more tolerant of each other as we proceed to debate the issues, that our end result will be acceptable, not only to the people of Michigan, but also in the sight of Thee. Amen.

PRESIDENT NISBET: The **roll call** will be taken by the secretary. Those present, please vote aye. Have you all recorded your attendance? If so, the secretary will lock the machine.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

Prior to today's session, the secretary received the following requests for leave: Mr. J. A. Hannah, temporarily from this morning's session; Messrs. T. S. Brown and Krolikowski, from today's session; and Mr. Baginski, indefinitely, because of illness.

PRESIDENT NISBET: Without objection, the requests are granted.

SECRETARY CHASE: Absent with leave: Messrs. Baginski, Barthwell, T. S. Brown, Mrs. Butler, Mrs. Conklin, Messrs. DeVries, J. A. Hannah, Heideman, Krolikowski, Millard, Mosier, Norris, Ostrow, Rajkovich, L. W. Richards, Sablich, Stamm, Stevens and Tweedie.

Absent without leave: Messrs. G. E. Brown and Wilkowski.

PRESIDENT NISBET: Without objection, the delegates are excused.

[During the proceedings, the following delegates entered the chamber and took their seats: Mr. Wilkowski, Mrs. Conklin, Mr. G. E. Brown and Mr. J. A. Hannah.]

Reports of standing committees.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 52 of that committee, reporting back to the convention **Committee Proposal 90,** A proposal pertaining to the judicial branch;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 90 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 53 of that committee, reporting back to the convention **Committee Proposal 91,** A proposal pertaining to the supreme court;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 91 as reported by the committee on style and drafting, see below under date of April 24.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 54 of that committee, reporting back to the convention **Committee Proposal 92,** A proposal pertaining to a court of appeals;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 92 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 55 of that committee, reporting back to the convention **Committee Proposal 93,** A proposal pertaining to the circuit court;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 93 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 56 of that committee, reporting back to the convention **Committee Proposal 94,** A proposal pertaining to the probate court;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 94 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 57 of that committee, reporting back to the convention **Committee Proposal 95,** A proposal pertaining to appeals from administrative tribunals;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 95 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

SECRETARY CHASE: The committee on style and drafting, by Mr. Cudlip, chairman, submits Report 58 of that committee, reporting back to the convention **Committee Proposal 96,** A proposal pertaining to general and special provisions relative to the courts of the state;
with the recommendation that the style and form be approved.
William B. Cudlip, chairman.

For Committee Proposal 96 as reported by the committee on style and drafting, see below under date of April 23.

PRESIDENT NISBET: Referred to the order of second reading of proposals.

Communications.

SECRETARY CHASE: None.

proper, however, to tell the age of this person. When you find out who it is, I think you will agree that I shouldn't.

A is for Adelaide,
The great crusader,
More crusades she enters
Than a gladiator.

D is for den mother,
From dawn to dusk,
Carrying the ball
For the rest of us.

E is for earnest,
The importance of being,
Which Adelaide shows
While others are fleeing.

L is for lioness,
Fierce in her den,
If they don't come to caucus
She'll swallow her men.

A is for affluence,
A schoolteacher's lot,
Earmark for highways
But for Adelaide not.

I is for irksome,
That Hale Brake is,
The more he "coverts"
The confuser she is.

D is for don't,
Don't e'er vote your conscience,
Vote just for "the package"
And all of that nonsense.

E is for energy,
Stores and potential,
And when it's all gone
What's the differential?

She don't have the votes!
Happy birthday, Miss Hart!

[Whereupon, Miss Hart received a standing ovation.]

PRESIDENT NISBET: Mr. Turner.

MR. TURNER: Mr. President, I can't let that go by. (laughter)

I am not going to tell you how or when this came about
Because she's not historical, of that there is no doubt.

When a lady makes the experience age of 28 or 9
It's birthdays not of record, and this I think is fine.

This lady that I speak of is not afraid of work.
She digs into the problem wherever it may lurk.

With many years at teaching school she proved to be a master.
She even took a reading course to get the meaning faster.
And now in the convention, she's the leader of the crew.

She gets them in a huddle and suggests what they should do.

She had a brood of 44 but since then it made a gain
Of 2 more members strong and true aboard the Demo train.

She has proved herself a worker and leader from the start.
So now I would like to say to her: happy birthday, Adelaide Hart.
(applause)

PRESIDENT NISBET: Miss Hart, you have the distinction of being twice welcomed on your birthday.

Committee reports.

SECRETARY CHASE: No committee reports.

PRESIDENT NISBET: Communications.

SECRETARY CHASE: None.

PRESIDENT NISBET: **Second reading of proposals.** We are considering Committee Proposal 91. The secretary will read the proposal.

SECRETARY CHASE: Item 2, which was placed at the foot of the calendar, is **Committee Proposal 91,** A proposal pertaining to the supreme court. A substitute for sections 2, 4, 5, 6 and 7 of article VII.

Following is Committee Proposal 91 as reported by the committee on style and drafting and read by the secretary. (For full text as referred to said committee, see above, page 1620.):

Sec. a. The supreme court shall consist of 9 justices to be elected [on] AT a nonpartisan statewide ELECTION AS PROVIDED BY LAW [basis]. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Each political party at party convention may nominate [1] ONE candidate for election for each position to be filled. Any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner [as] prescribed by law, not less than 180 days prior to the expiration of his term. Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by [qualified] REGISTERED electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.

Sec. b. One justice of the supreme court shall be selected by the court as its chief justice in the manner and for the term provided by the rules of the court. He shall perform [such] other duties [as may be] required by the court. The supreme court shall appoint an administrator of the courts and other [judicial] assistants of the supreme court as shall be deemed necessary to aid in the administration of the courts [in the] OF THIS state. The administrator shall perform [such] administrative duties [as may be] assigned by the court.

Sec. c. The supreme court shall have [: a] general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; AND appellate jurisdiction as provided by RULES OF THE supreme court [rule,] . [it being provided that] The supreme court shall not have the power to remove a judge.

Sec. d. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts [in the] OF THIS state. The distinctions between law and equity [proceeding] PROCEEDINGS shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. e. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. f. The supreme court may appoint, [and] MAY remove, [its staff] and shall have general supervision of [the] ITS staff. [of the court and] IT SHALL HAVE control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff[,] except that the salaries of the justices [of the supreme court] shall be established by law. All fees[,] AND perquisites [and income] collected by the [clerk] COURT STAFF shall be turned over [by him] to the state treasury and credited to the general fund. [Neither the supreme court nor any justice thereof shall exer-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

cise any other power of appointment to public office, except as otherwise provided herein.]

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, the changes, as you note, made by the style and drafting committee in regard to the 6 sections of Committee Proposal 91 have been very minor. They relate solely to draftsmanship. There has been no change in the intent as passed by the committee of the whole and by this convention on first reading. I understand there are pending several amendments, particularly to section a. I would imagine that the debate on those amendments will explain and take care of everything that needs to be said. I would suggest that we proceed with the amendment.

PRESIDENT NISBET: The secretary will read the first amendment.

SECRETARY CHASE: Messrs. Goebel, Mosier, Habermehl, Radka, Wood, Brake, Boothby, Gover, Kirk, Anspach, Turner, Leibrand, Pugsley, Dehnke, Hutchinson, Gadola, Finch, Shaffer, Shanahan, Erickson, Batchelor, Beaman, Mrs. Butler, Messrs. Farnsworth, Heideman, Stevens, Gust, L. W. Richards, Sleder, Haskill, Spitler, Perras, Rood, Stafseth, McAllister, Dell, Iverson, Blandford, Hubbs, Powell, White, Shackleton, Sharpe, Plank, Karn, Mrs. Koeze, Messrs. Knirk, Rush, Tweedie, Donald Doty, Figy, Page, Thomson, Howes, J. B. Richards, Hoxie, Mrs. Conklin, Messrs. Seyferth, Dean Doty and Sterrett offer the following amendment:

1. Amend page 1, line 1, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 7 justices, to be elected by the electors of the state. The term of office shall be 8 years. Not more than 2 terms of office shall expire at the same time.

Justices of the supreme court shall be nominated and elected at nonpartisan elections, from judicial districts, as provided by law. Such districts shall be as nearly equal in population as may be possible and shall follow the boundaries of judicial circuits. No judicial circuit entitled by reason of population to elect more than one justice shall be divided but all justices shall be elected at large from the judicial circuit.

Incumbent justices may secure their nomination by filing an affidavit of intention to be a candidate.".

To this amendment, Mr. Sterrett offers the following amendment:

1. Amend the amendment, second paragraph, second sentence, after "be as" by striking out the balance of the paragraph and inserting "follows:

1. District 1 shall be the upper peninsula with one justice;

2. District 2 shall be the northern portion of the lower peninsula consisting of the counties north of a line drawn along the southern boundaries of Oceana, Newaygo, Mecosta, Isabella, Midland and Arenac counties with one justice;

3. District 3 shall be Wayne, Oakland, Macomb and Monroe counties with 3 justices;

4. District 4 shall be the remaining counties of the state south of district 2 and west of district 3 with 2 justices.".

PRESIDENT NISBET: The question is on the amendment to the amendment. Mr. Sterrett.

MR. STERRETT: Mr. President and delegates, this amendment is not intended to create considerable debate because I'd like to proceed to this proposal as fast as we can. The only intention here is to try to develop some sort of supreme court plan that, possibly, all of us could agree upon. I, personally, have always been for the appointive plans but I really do feel that the voters are not familiar enough with these types of plans. It would take considerable education on our part. I would prefer to see the appointive plans.

I do like the present committee proposal. However, I understand from talking to many delegates that there is considerable support for a district plan. My idea with this district plan is to follow the present amendment which this amends, but to bring it as closely as possible to an at large situation as the present committee proposal for second reading shows. In dividing the state into the 4 districts, I worked with Dr. Combs and Mr. Bolton in the research department and we have tried to look at the population as fairly as possible.

The upper peninsula has approximately 4 per cent of the population for one district. The northern half of the lower peninsula has approximately 6 per cent of the population, for another district. Each of these 2 districts receive 1 justice of the supreme court. The third district, which would be Monroe, Wayne, Oakland and Macomb counties, would have approximately 47 per cent of the state's population and then the balance of the state would have approximately 43 per cent. District 3 — Monroe, Wayne, Oakland and Macomb — would have 3 justices. District 4 would have 2 justices. These have been so divided that the districts are broad in scope and probably will not need changing for the next 30 years. At that time, there is nothing in this amendment nor in the initial amendment which would not permit the legislature to reapportion these districts if it is deemed necessary.

Again, I would like to repeat that this is not a district plan as we originally had presented to us where there were 8 districts, breaking it down into something similar to a beehive. Here we have made it as broad as possible to resemble that which it would be if the justices were elected at large in the state. At the same time, this will more or less guarantee that the upper peninsula will have 1 supreme court justice elected up there and also the populous urban counties of Monroe, Wayne, Oakland and Macomb will have 3 justices, which are more than any other individual district. Now, I'd like to explain just one thing. The reason why Monroe county was thrown into district 3 rather than Genesee county, is because if Genesee county is entirely included in this district, it would put it way over 50 per cent. By putting Monroe county in, it leaves it under 50 per cent and is more logical and reasonable for a district, and to have 3 justices as compared to the other districts in approximate proportion.

As I say, I do not intend to have this for considerable debate. I would prefer to see it considered. If somebody has objections, I would very sincerely like to hear the objections to this plan or this amendment and as soon as a few objections have been raised — I don't believe there will be any other speakers speaking on this. I did this alone, so to speak, for the convention's benefit to see how it would be accepted. I feel that it would be a good plan. I would like to urge a yes vote on the amendment. However, after a certain amount of debate, I would like to see us vote on this and get on to other matters.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President, Mr. Sterrett says he would like to hear from anyone who does criticize the plan or his amendment or the other plan as suggested. So far as I'm concerned, I'm certainly happy to know that Wayne county would send someone up here that was going to take something away from them. Of course, that's what always happens when they send someone like Mr. Sterrett up here, who doesn't care whether he represents Wayne county or whether he represents the rural area. That just gives them that much more representation. So far as I'm concerned, the amendment certainly isn't right. We certainly aren't getting the number of justices we ought to get with this or with any other amendment they may bring up. Balkanizing this thing hasn't done anybody any good.

MR. STERRETT: Mr. President.

PRESIDENT NISBET: Mr. Sterrett.

MR. STERRETT: Not due to those remarks, but at this time, temporarily, I'd like to withdraw this amendment.

PRESIDENT NISBET: The amendment to the amendment is withdrawn. The question is on the amendment offered by Mr. Goebel and others. Mr. Goebel, do you care to speak to your amendment?

MR. GOEBEL: Mr. President and fellow delegates, I would like to take just a few moments to give you my idea about this amendment to Committee Proposal 91. I am not too happy, to be honest with you, with the provisions for electing the supreme court justices under Committee Proposal 91, which was approved in committee of the whole. If you will remember, there were about 3 ways that justices could be nominated for the supreme court. First, each political party at party

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convention, could nominate a candidate. The incumbent justice could file for reelection by filing an affidavit. And then anyone else who wanted to run could become a candidate upon securing the proper number of names on his nominating petition. To me, this represents sort of a heterogenous approach and personally I do not care for the partisan angle involved here, the partisan connotation. I believe firmly that the people of the state are in a mood where they would like to see their supreme court justices elected on a nonpartisan basis. And I think that the amendment which has been signed by 60 people, at least the signers of that amendment, feel pretty much as I do and feel that our amendment is a much more satisfactory method than now prevails in Committee Proposal 91 that is before us.

Under this amendment, a copy of which all of you have on your desks, the justices of the supreme court shall be nominated and elected at nonpartisan elections from judicial districts as provided by law. It also provides that incumbent justices may secure their nomination by filing an affidavit of intention to be a candidate. I like very much both of these features. I appreciate the fact that there may be some opposition to a district plan but, to me, I think it offers some real advantages. First, as a matter of fact, with the partisan nominations that we have now in party conventions of the justices of the supreme court, earlier evidence submitted on the floor in committee of the whole indicated beyond much doubt that the parties, as a matter of practical politics, take into consideration districts in nominating the justices. And the evidence submitted shows that for some length of time, quite a long time, as I recall, most of the candidates did actually come from the various districts around the state.

I think one particular advantage of the district idea is that, to my mind, if I were a lawyer and eventually aspired to be on the supreme court bench, I would feel that I had a real opportunity to do so under this plan because I probably would become a candidate for the circuit court, become a candidate first because I wanted to serve as a circuit court judge, but also—which is more important, I think—I should have the feeling that I would have an opportunity to represent this district on the supreme bench, which is much more desirable to me as a candidate for the supreme bench than it would be to feel that I had to be selected by a party and take my chances with everybody else in the state. And I think that this plan would encourage circuit court judges to do an even better job than they do at the present time, if that's possible, with the feeling that on their part they quite likely would have an opportunity to become a candidate from that district for the supreme court.

For these and other reasons, I urge your support of this amendment, which I think is considerably better than the proposal that now stands before us. And if I might at this time, Mr. President, I would like to yield to Judge Mosier.

PRESIDENT NISBET: Mr. Mosier.

MR. MOSIER: Mr. President and fellow delegates, it isn't necessary to repeat the history that the district plan had when it came up on first reading. But I challenge your attention at the outset to the language of the amendment sponsored by some 60 delegates of this convention. I had no hand in the preparation of the language. Therefore, I am in a position to ask you to look at that language very critically and see if you cannot agree with me that it is good, clean constitutional language. You will note that the amendment provides for 7 justices. The committee proposal provides for 9. It seemed to us that with the addition of the intermediate appellate court of 9 justices that the work of the state supreme court would be lessened, and by diminished work, a court of 7 would be sufficient. Our present court, as you know, is a court of 8 and it seems advisable that the court should be of an unequal number of justices because we have in the past frequently had decisions of 4 to 4, in which the court neither decided for the appellant or the appellee.

Now, I am going to speak very briefly on just one phase of this matter, and I am going to meet the language that Mr. Madar used this morning. Some newspapers and others have said that the district plan would lead to balkanization or parochialization of our state judicial system, and I want to say that this charge is made with absolutely no foundation whatever. The justices of the supreme court called from various sections of the state have regarded the state as a whole, and their decisions have in no wise reflected the area from which they came. Likewise, the circuit judges who are elected in circuits or districts have held court in many other counties in Michigan and without any thought of the county or district from which they came. Some of us who have served in that capacity have been sent to various courts of the state, and many of us to Detroit. And I am frank to say that the fact that I was sitting in the circuit court of Wayne county changed in no wise my conception of the duty of a judge to ascertain the facts and then apply the law. And the fact that I was in Wayne county made absolutely no difference to my conception of the case nor decision thereon.

I am asking you if any of you have the idea that Chief Justice Dethmers, who came from the western side of the state, in Holland, if his decisions on the supreme court reflect any balkanization or parochialization of his position. Or if Justice Kelly, who came from Detroit, on the opposite side of the state, if his decisions showed any tendency toward balkanization. It's easy to make a charge of this kind, but it seems to me that it is simply a figment of the imagination and should not receive serious consideration by this convention. At this time I will yield to Mr. Goebel.

MR. GOEBEL: Mr. President, I would like to yield to Senator Hutchinson for further testimony on this amendment.

PRESIDENT NISBET: Mr. Hutchinson.

MR. HUTCHINSON: Mr. President, I don't think I can add anything much to what Mr. Goebel and Judge Mosier have said. In my opinion, the wording of the amendment before you is in good constitutional form. It leaves to the legislature the formation of the districts but at the same time prescribes a limitation upon the terms and also makes certain that the court will be a continuing body in that not more than 2 terms may expire at the same time. This assurance of a continuing court, where you won't have a complete turnover at any one time is extremely desirable in the judiciary and this feature in this amendment would carry that forward.

In my opinion there is a strong desire in this convention to assure a nonpartisan selection even of supreme court justices and we have to recognize the fact that if we are to have them nonpartisanly nominated as well as elected, it must be on something other than a statewide basis. A statewide nonpartisan primary system is impractical, as we all recognize.

PRESIDENT NISBET: Mr. Goebel.

MR. GOEBEL: Mr. President, I'd like to yield to Delegate Brake.

MR. GADOLA: Mr. President, I'd like some parliamentary information. We're in the convention assembled and, as I understand rule 24, the mover can speak twice and anyone else can speak but once upon any motion. Is this yielding proper?

PRESIDENT NISBET: It is. He is not speaking more than twice when he is yielding to other people.

MR. GADOLA: In other words, the one man can speak as often as he wants to?

PRESIDENT NISBET: He is not speaking. He is just yielding the floor to somebody else. Mr. Brake.

MR. BRAKE: Mr. President, ladies and gentlemen of the convention, as I understand the sentiment in this convention, there are 2 plans, one of which is likely to be adopted substantially in the form presented. One is the district plan covered by the amendment that is now before us. The other is what we wrote in on first reading, or something substantially like it. There are other plans and some very serious and devoted backers for the Missouri plan or some modification of it, direct appointment by the governor, or nomination and election on a partisan basis.

If that had any chance, I could go for that rather than the one that we wrote in on first reading. I don't like the hypocrisy that is involved in having one partisan on one day

and supposedly nonpartisan on the next day. It seems to me that those people who are the advocates of these other plans, no one of which, as I understand the situation, had any possibility of getting through, need to choose between these 2, and I will hope that they will follow what they have continuously talked about: the idea of getting the courts just as far on the nonpartisan side as they can. Certainly, there can be no question but that the district plan affords a better opportunity for nonpartisanship than the plan we wrote in on first reading, where the candidates are nominated at party conventions. I trust that those who are in favor of the other plans will swing to the district plan so that that may be adopted.

MR. GOEBEL: Mr. President, I'd like to yield to 2 more men, the first of which is Judge Dehnke.

PRESIDENT NISBET: Judge Dehnke.

MR. DEHNKE: Mr. President and fellow delegates, I propose to take only a few moments to briefly review some of the things that confront us. I'd like to emphasize what Mr. Brake has just said. We now face a choice between these 2 methods: one, the partisan nomination and nonpartisan election, or this present plan proposed by this amendment. It is obvious, I think, to all of us that in order to make the election of supreme court justices completely nonpartisan, there must be a nonpartisan primary as well as a nonpartisan election. And I think we have all been compelled to admit to ourselves that to think of a statewide primary, and then on top of that, a statewide election, based completely on a candidate's own resources, or the resources of those who are willing to place him under obligation to them, just puts the average judge and lawyer completely out of the picture.

I think this plan would also assure a greater proportion of judges with previous judicial experience being placed upon our supreme court than is possible under the other system. In addition to that, I think it would have a tendency to bring the court closer to the people and the people closer to the court, so that the court would not be merely an ivory tower atop Mt. Olympus, because of the greater probability of the average run of citizens having some personal acquaintance with at least one member of the highest court of the state. As has been pointed out previously, this plan has worked acceptably, so far as we know, in Illinois. This is not a matter of party. The prime purpose of this is to get the election of judges away from parties rather than just to involve parties. It's a matter of producing a more acceptable, a more efficient and a more representative court system and I hope you support this amendment.

MR. GOEBEL: Mr. President, I'd like to yield to Delegate Powell, the last speaker at the moment.

PRESIDENT NISBET: Mr. Powell.

MR. POWELL: Mr. President and fellow delegates, so much has been said and it has been so well said that I shall be exceedingly brief. I am very glad that we are to have this opportunity to vote once more on a plan that has the district feature. In the outstate areas we have many able attorneys and jurists who are well qualified to serve on the supreme bench, but who would not have the financial means or the backing to campaign statewide, particularly on a nonpartisan basis. Hence, I hope that we will speedily now adopt this pending amendment.

PRESIDENT NISBET: The Chair recognizes Mrs. Cushman.

MRS. CUSHMAN: Mr. President and fellow delegates, I rise to oppose the amendment. Good constitutional language or not, to my thinking, this amendment is vicious and dangerous. I can only think that the people that are proposing it are deluding themselves. The league of women voters in their original stand on the constitution had nothing in their language regarding this districting plan because it did not enter their minds that such a thing might be proposed. They do, however, now have something and they are definitely opposed to this thing. Likewise, citizens for a sound constitution are opposed to this districting plan. It will make it very difficult for many civic minded people of both parties to support or work for this new constitution if this is included in it.

Nonpartisanship has been mentioned here but I can only say the effect is obviously not one of promoting nonpartisanship. We now have a representative from many areas of the state and in that way it is evident that this plan will not necessarily increase the representation on the supreme court from the various parts of the state we already have. I can only say, once again, that I certainly hope that you will defeat this amendment. Thank you.

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President and members of the convention, at the time that the district plan was first debated in this hall in committee of the whole on first reading, I took no part at all in the debate. I had given to the sponsors of this plan a statement that I would not comment upon its merits one way or the other. And I lived up to that pledge at the time of first reading until we reached a point where the district plan had had 2 votes. Now I feel impelled, however, to rise to oppose the concept of the plan. I, first of all, point out to the members of this convention this: that there has not been demonstrated, either before our committee or before this body, a need for the plan that has now been offered. The sponsors thereto are formidable, indeed, and men whom I have the highest respect for. But let me call this to your attention: that the constitutional convention was not called, in essence, to overhaul the method of electing our supreme court.

To those who advocate this particular type of plan I state only this — and a number of the gentlemen are men who stated that we should make as little change as possible — that what you are proposing here is the greatest radical change that has come before this body; that nowhere in any other branch of the government has there been advocated a more radical departure from what has been the history of this state for over 100 years than what is advocated in this particular amendment. And if you, as the sponsors, are prepared to go to your people and lay out the reasons why you were impelled to make this drastic change, then I say the burden belongs on you. We have replaced the 15 mill amendment because it was stated it was too drastic a departure. We are going to elect part of our ad board and appoint some others because it was said to go all one way would be too drastic a departure. But if you want to give to those who will oppose this constitution the one horse that they can ride to whip it, then you will pass this particular amendment, because you will be fighting in the courts of this state and in the legislature year after year the apportionment battle that we are now fighting in the senate and on the house floor.

I can only say to the members of my party that I can think of no poorer political move to make than the advocating of this particular plan. We have heard that it worked in Illinois. And I state, if you are willing to accept the Illinois method of apportioning the legislature then go ahead and accept the district plan for the courts, because the 2 were tied together when they were making Illinois a state, when it was ripped apart in the civil war. Illinois has 100 years of the district plan and this state has over 100 years of the statewide election of judges on either a partisan or a nonpartisan basis.

Now bear this in mind: that from hereafter there will be no gubernatorial appointments in statewide campaigns. No appointee with an incumbency designation will have a head start, so to speak, and the candidates will be running on an even-steven basis. If you want to subject this constitution to the charge of politics, and particularly in light of the recent supreme court decision handed down yesterday, then you can do no better than to vote for the district plan because the Republican party will be charged with playing politics with the supreme court of the state of Michigan. I submit that there has not been a hue and a cry, and while we may not be perfect in what we have done, there are amendments that can take care of some of this. You will be forever tying the hands of the legislature with this type of a plan that has never before been tried in this state. And if 75 or 80 are willing to substitute their judgment over 100 years to bind the people of this state for the next 80, with the legislature given no opportunity to correct it if it does not work, then the burden again falls upon you.

We have the court of appeals by districts and this is logical. When we talk about a statewide campaign, let's face a little practical politics. You can statewide campaign in a third of this state, if you really want to be practical about it, because you can hit 90 per cent of the people by staying south of the line from Muskegon to Bay City. I say this with all due respect to all of my good friends who live in the northern part. But if you're talking about the people, you can have 2 districts or you can have 7. There is no restriction upon the legislature. And when some senator or representative wants to move a circuit out of one district or the other, the logrolling will begin in the legislature. They're having a hard enough time reapportioning the congress of the United States.

We have a plan. It is not perfect, by any manner or means, but it is an elective system. We have removed the evil of returning to the political party for renomination. We can offer amendments to provide that the legislature, if they desire, may create districts; and I so intend to do. But to tie, for time immemorial, the hands of the legislature to an untried plan in this state, to me is the utmost folly. And I therefore urge with everything I can give to you, that this amendment be defeated. (applause)

PRESIDENT NISBET: The Chair recognizes Mr. Allen.

MR. ALLEN: Mr. President, when this matter was discussed on first reading, I had on my desk a great assortment of books and Mr. Brake came over and said, "Glenn, what are you doing with all those books? You make me nervous." I had intended to speak on this subject at that time but because it took so long, I did not. I don't have the books here—at least all of them—but I would like to, in a short way, give you what I had in mind at that time.

Let me say at the beginning that these books were all the Illinois Bar Journal, The Northwestern Bar Review, University of Chicago Bar Review, and so on. And if this convention should think that the experience of the district plan in Illinois is satisfactory, then this convention is wrong. Because I had a series of articles extending over 10 years, all critical of the district plan in Illinois. Now, the main problem in Illinois is the same problem that we have faced here in Michigan on the way we draw our lines for the legislature. The question in Illinois has been dissatisfaction with the way the district lines are drawn. Every 2 years in Illinois, for the last 10 years, there has been a serious effort made to draw the district lines differently. And it depends on whose point of view you take: a Republican point of view or a Democrat point of view. But even the Republicans in Illinois, many of them are dissatisfied with the way the lines are drawn. So I say to you today that if we go to the district plan, we are going to start the same fight that Illinois has had—and Illinois is comparable to Michigan because it has the large city of Chicago and outstate. We are going to start this fight and it isn't going to make any difference how conscientiously these lines are drawn, there is going to be a fight about it and we introduce into Michigan government the same fight in the judicial section that we had in the legislative section for our Michigan constitution.

Now, just think of what will happen, no matter how we draw these lines. I assume that under the 7 district plan it will be quite similar, when it ends up, to the 8 or 9 district plan on first reading, where 3 judges, perhaps, will come from Wayne county. Now, we know that in Wayne county approximately 33 per cent of the voters are Republican, and if you elect 3 judges from Wayne county, the practical effect of this is that votes of the 33 per cent of the Republican party voters over there are not going to count in the selection of a judge. It will have the effect, I believe, of disenfranchising 1/3 of the voters of Wayne county unless the political complexion seriously changes. But today those Republicans voters did have a substantial say in the election of 2 or 3 of our present supreme court justices because their vote did count for the election of Harry Kelly. Their votes did count for the election of John Dethmers. And reversely, in the outstate areas, which are strongly Republican, and maybe 1/3 Democrat, it will have the effect of disenfranchising or reducing to a very small significance the vote of the minority party in the districts outstate.

Now, a second point I'd like to make: someone has said: well, if you had the district plan it will make it within the financial means of the average lawyer or judge to run. Well, I think those of us who have run for election know something about the cost. And I know that in a congressional district which is much smaller than these judicial districts will be, that you can't get through a primary campaign without at least the cost of $15,000, and the judicial districts will be larger. Now, I don't think there are many candidates who, of their own money, can put in $15,000 and, if you have a larger district, probably $30,000. That support has to come from somewhere else. Admittedly it's not as much as running in a statewide election, but the candidate who runs is going to have to depend on other people's money, and he is going to have to depend upon it substantially unless you want to reserve to the candidates, make them the exclusive candidates of people who are independently wealthy. And I don't think we want to do that or that we should do it.

Thirdly, I would like to say this: I wonder how many of the convention know that Michigan did have the district court plan for the supreme court? From 1835 to 1850 the governor appointed judges. The 1850 constitution went to the election method. But for 6 years it was provided that the election method would be on a district basis. There was this difference: in the 8 judicial districts the selection was made on a partisan rather than on a nonpartisan basis. There is a very interesting article written by a man by the name of Norton, called Michigan's First Supreme Court Election. This was on the district basis and he reviews the experience in Michigan. Now, admittedly it isn't exactly the same thing that is proposed here because what is proposed here is nonpartisan district basis, whereas in 1850 to 1856 it was partisan district basis. But the district way of electing supreme court judges as reviewed in this article did not turn out to be too satisfactory. For example, I quote from this article:

> Nevertheless, when it came to the nomination and election of judges under the new plan, it appears that much of the altruistic and benevolent attitude was lost in the political world.
>
> Party organs were quick to recognize that political machinery would be needed in each new judicial circuit to aid in selecting candidates and conducting the campaign. An indication of how political leaders responded to this need can be made in the following charges made by an editor who condemned particularly the election of judges by districts instead of by a general statewide election.

Then follows a quotation from the Pontiac Jacksonian, March 19, 1851.

Now, I would like to say this to the convention: we came here to draw a constitution for the future. There is now proposed a plan which was given up by Michigan 100 years ago. I don't think this convention should turn back to a plan that is similar to the plan of 100 years ago on this district basis, though I do admit it's different on the nonpartisan than on the partisan basis. I don't think we should inject into this convention, and into all of our future elections, the problem that Illinois has of where to draw the lines. I admit that the present system has not been entirely satisfactory but I say that the system that is proposed by this amendment also is unsatisfactory, and if we are going to make a change, let's make it a change that is for the better and let's not go back to something that hasn't been satisfactory either in Illinois or in the limited experience that Michigan had.

PRESIDENT NISBET: The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, we've heard eloquent presentations on both sides. I understand that there are some 8 speakers now seeking recognition. I move that further debate on this amendment be limited to 30 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that debate be limited to 30 minutes. Those in favor will say aye. Opposed, no.

The motion prevails. The Chair recognizes Mr. Madar.

MR. MADAR: I certainly can only say, after listening to Judge Mosier: shades of Hitler, Mussolini, Joe McCarthy, John Birch, et al. (chorus of boos)

MR. MADAR: Go ahead, gentlemen, say "boo."

PRESIDENT NISBET: May we be in order. Mr. Madar.

MR. MADAR: I am in order.

PRESIDENT NISBET: Continue. That's what the Chair is trying to say.

MR. MADAR: I hope that no judge that's ever elected in this state or appointed in this state will ever twist thoughts or facts like they've been twisted. I didn't say that Mr. Dethmers wasn't a good judge. I didn't say that Justice Kelly and Justice Dethmers weren't good men and that they weren't doing a good job. For Mr. Mosier's knowledge, so that he will know in the future, I believe I did more to elect those 2 men than he did because I sat in the Fort Shelby the night that Fred Alger and Pat Cleary and myself begged Harry Kelly to come back so that we could elect Justice Dethmers judge with Kelly's assistance. I think, though, that I could get Justice Dethmers and Justice Kelly aside and I'm sure that they would say that balkanization is something we don't want here. Balkanization is only used by small people, small people who can't get where they want to go otherwise.

We have men here who talk about hypocrisy. Why, I've never seen so much hypocrisy in my life as practiced by the very man who said it. Deals! This is one of the deals in the package. (laughter) "We'll put balkanization across along with the rest of it." So far as I was concerned, I just meant that we ought to elect these people from the entire state, not districts. You get big men that way. You get big men by picking from the entire state, not just by picking them from a certain district.

Why, yesterday all I heard here was that in certain areas in this state there are no attorneys at all. Then for heaven's sake, how are you going to pick someone suitable to be a judge? Every once in a while in each and every party there are big men. And I want to say, and I want to say it for the record, that I've seen big men in both parties come up. And I remember back when one big man in this state was crucified because he did what he thought was right. Yes, I'll mention him. Kim Sigler. And you helped crucify him; men of his own party.

MR. WALKER: Point of order.

PRESIDENT NISBET: State your point.

MR. WALKER: Mr. President, I don't think this kind of vilification of any group of individuals is in order and I would like to state that as a point of order. (applause)

PRESIDENT NISBET: Your point is well taken. Mr. Madar, will you stick to the amendment as offered?

MR. MADAR: I will. Today rises another man and I hope he won't be crucified. Danhof, you did a swell job and I hope you continue.

PRESIDENT NISBET: The Chair recognizes Mr. Tubbs.

MR. MARSHALL: May I ask a question?

PRESIDENT NISBET: Yes.

MR. MARSHALL: Delegate Van Dusen moved to limit debate how long?

PRESIDENT NISBET: To 30 minutes.

MR. MARSHALL: How many more speakers do we have?

PRESIDENT NISBET: About 7, 8 or 9.

MR. MARSHALL: Would it be possible to move at this time that we limit each speaker to 5 minutes then?

PRESIDENT NISBET: They will take care of it themselves, the Chair hopes. Would you please be forewarned? If not, you can make the motion again, Mr. Marshall. Mr. Tubbs.

MR. TUBBS: Mr. President, I am sure I will comply with Mr. Marshall's suggestion. I think every member of this convention knows that I am in favor of and was in favor of the American bar association plan so that we would have an independent judiciary free from political considerations and free from the awful implications of having to run for office on a nonpartisan — I don't care if it's a nonpartisan or partisan. However, I appreciate very much the erudition of Delegate Allen, and I think he has given a very valid reason for voting against this proposed amendment.

I will say frankly that I do not like the supreme court setup that was adopted by the committee of the whole. I would like, if we are going to have nomination of supreme court justices by political parties, that we carry it all the way, that they then will run on partisan tickets and with their party ticket and thus get the financial support which they must have for the awful job of running for office in this state on a statewide basis. I am not in favor of statewide elections for justices of the supreme court, I assure you. But it would be better, if they are going to be nominated in party conventions, to have them elected also by party tickets. That's the way they do it in some of our sister states. Last week I had the opportunity to discuss this problem with many lawyers in New York city. The only places that they do not like partisan politics in the state of New York are at the lower court level. So far as the court of appeals of New York is concerned, they all feel with the long term of 12 years, that statewide elections on a party basis are not bad. And that court is a very high and very distinguished court.

Now, coming to this particular amendment, I agree with what Delegate Allen has said: that this is not the way to appoint or elect a supreme court. If this is a plan devised for the sole purpose of maintaining the supremacy of one party in the supreme court, I am against it, and I don't care which party or what party it is. The supreme court should be nonpartisan and wholly independent.

PRESIDENT NISBET: We have 9 speakers and 22 minutes left. Please govern yourselves accordingly. Mr. Hodges.

MR. HODGES: Mr. President and fellow delegates, I remind the sponsors of this amendment that we carried the calling of this constitutional convention in Wayne county and we can defeat this constitution in Wayne county; and defeat it we will, if this plan is adopted. The calling of this convention carried by over 200,000 votes in Wayne county, and there will be a 200,000 majority against this thing if it is adopted. So those of you who really care about a new constitution, I would keep this in mind. This is a threat and make the most of it.

PRESIDENT NISBET: The Chair recognizes Mr. Romney.

MR. ROMNEY: Mr. President and fellow delegates, I haven't spoken frequently in this convention and I speak on this occasion because of the importance of what we are dealing with. I think, for obvious reasons, I would prefer not to oppose some of the supporters of this amendment. However, I feel that the nature and character of what we are dealing with warrants such opposition.

Now, as delegates to this convention, we were elected with a responsibility that transcends that of the supreme court justices. I don't think this has been as apparent in this convention as it should have been. As a matter of fact, the lack of this fact in our activities should be fair warning of the fact that sectionalism can creep into a court if we permit it to be elected on a sectional basis.

Now, I am opposed to this amendment for these reasons: 1, I believe the people are just as opposed to a sectional court as they are to a partisan court, and they are just as opposed to sectionalism in the administration of justice as they are to partisanship in the administration of justice; 2, I cannot agree with the idea of the supreme court justices representing districts. They should be responsible to all the people of this state and they should administer justice without sectional or representative considerations; 3, this plan relies on legislative districting, which opens the districting of the court to partisan boundary line manipulation, and I am opposed to that in the supreme court as well as elsewhere; 4, under present circumstances this amendment is too subject to the charge that it is a partisan oriented approach. And for that reason I am opposed to it; and 5, personally, I favored the initial appointment of judges of the supreme court by the governor subject to subsequent election against opponents nominated either by the parties or by petition. Now this is lost and is not going to prevail in this convention.

I sincerely believe that the proposal we now have as a result of first reading is superior to this plan and, therefore, I am opposed to this amendment. However, with its grave defects — and I think this amendment has grave defects — I believe this plan is better than the present plan we have. I say this primarily because of the last sentence here. I think the greatest improvement we can make in the supreme court setup is to

put an end to the necessity of a supreme court justice going back to a party convention for renomination and accountability on a partisan basis. I think that is unthinkable and indefensible. I am more gravely concerned about the impact of the adoption of this amendment on the approval of a new constitution than almost anything else we can do. Consequently, I urge, wholeheartedly, the defeat of this amendment.

PRESIDENT NISBET: The Chair recognizes Dr. Pollock.

MR. POLLOCK: Mr. President and fellow delegates, I had intended to speak at some length on this subject but I am happy to say that I admire so much the remarks that have been made by the chairman of the committee, Mr. Danhof, Mr. Allen, Mr. Romney and Mr. Tubbs, that it would be superfluous for me to repeat some of the arguments I had intended to give.

This amendment, instead of being based upon sound experience, is, in my opinion, nothing but a leap in the dark. It is not based upon the desire of the members of the bar of this state because the committee and this convention both rejected the poll of the members of the bar who presumably should be well informed of the relative experience of other states in the construction of their supreme court. And so this amendment — I can't understand, quite, its motivation — I do think it would not only endanger the success of this constitution but, when compared with what we have already done in the field of the executive and even the legislature, to think that we should now try to divide up the supreme court on a parochial and provincial basis instead of following all the experience which we've had in this country, which seems to me to be to the contrary — with the exception of the one state of Illinois, the experience of which has been completely punctured, I think, by Mr. Allen's argument — and when you add to it the point which I am so happy that Mr. Allen presented, that we've had our own experience in this state with it, and that 100 years ago, I say, therefore, that this is a very unsound plan and I hope the convention will defeat it.

PRESIDENT NISBET: We have 16 minutes left. There are 6 speakers left. Mr. Ford.

MR. FORD: Mr. President, members of the convention, I don't think there should any longer be any doubt in anyone's mind who is a member of this convention that there is a divisive attitude of sectionalism that extends throughout this state that stands in the way of the progress of this state. No one in this room subscribes to the principles of a political party that does not advocate moving Michigan in a direction of progress, who does not recognize that Michigan is changing very rapidly and has been changing and that we are going to have to do something to have Michigan function as a state rather than as a big city and a country bloc and an upper peninsula bloc. There can't be any doubt in anyone's mind about how easily sectionalism creeps in, and that this sectionalism is, in fact, a stronger deterrent to understanding between people in this convention on many occasions than is partisanship. This is the kind of thing that we are asked to put into the supreme court.

Judge Mosier, I think, made one of the most eloquent presentations on behalf of this amendment. I have a great deal of respect for Judge Mosier gained from working with him for several months on the judiciary committee and I think every lawyer in the convention does. I think he is completely sincere in his observations. But I have to disagree with the conclusions he reaches and the assumptions that he makes, based upon his ethical approach to things, because we have no assurance that this is the kind of an approach that is going to be used. For example, he uses as an analogy it won't be sectionalism and this system could work because he, as a circuit judge, and others like him have visited Wayne county, for example, and in making decisions in Wayne county, they were not influenced by what the people back home thought. Well, the obvious question to be asked at this point is: how many decisions are made in Wayne county that directly affect the individual rights of the people back home, of the people in the county from whence came the visiting judge? When you send from Wayne county or from the Keweenaw peninsula a justice of the supreme court to Lansing, when he makes a decision in a majority of the cases, that decision affects every man, woman and child in the state, regardless of where he comes from. This is not true of a visiting judge, no matter where you send him.

It has been pointed out by both Judge Mosier and by Mr. Goebel that the present justices of the court come from various parts of the state and that the present system has in fact resulted in selecting judges from throughout the state. He pointed to the evidence that I believe we presented as a part of the minority presentation when this was up on first reading, showing that this has occurred. And we're very happy that this has occurred because it demonstrates a possibility of overriding sectionalism when you are picking people that will be able to satisfy the people throughout the state of Michigan and that they have the interests of the state at heart and not the interests of a particular city or county or group or bloc of people in the state.

Now, one of the strongest arguments that has ever been made in this convention — and I have been opposed to the Missouri plan or anything resembling it from the very beginning — but one of the strongest arguments, and the one that has made some impact on many of us, has been this concept of a screening process that is involved in the selective process as opposed to the election. The system that we have now has built into it a very superior screening process. No less an authority on the screening process than Mr. Winters, of the American judicature society, told the judiciary committee that he preferred, of course, an appointive system, but if we couldn't have an appointive system, that the system that we had was superior to that of most of our sister states because we had evolved, whether by accident or design, a system that in Michigan has produced a screening process combined with the elective process and has produced on the whole a superior caliber justice on our supreme court.

Now, just a brief observation with respect to Judge Dehnke's urging upon us that Illinois is satisfied with the system. The president of the Illinois bar association appeared before our committee. He stated very candidly that he is a Republican and very candidly that the Republicans have an ironclad, clear cut majority on the court because of the district system. He also stated candidly that he did not think that the district system was a good thing, and that as one of the advocates of a judicial reform, he would not support it at this time except for one reason: that they are so anxious to revise the balance of their court system over there that they are willing to buy a continuation of the district plan because it is the only way that they can get the revision through the legislature. As Bob Danhof has indicated, this is the key to the whole thing. It is not something that the lawyers, the judges or the people fighting over the years for judicial reform in Illinois want, and I think that you would find that we would repeat that history in Michigan and you would have the Michigan bar association fighting over the next 10 or 20 years, trying to correct the error that would be made if we adopted this amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Downs.

MR. DOWNS: Mr. President, have the yeas and nays been demanded?

PRESIDENT NISBET: They have not.

MR. DOWNS: I demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand supported? Sufficient number up. Mr. Downs.

MR. DOWNS: Mr. President and fellow delegates, I, too, rise in opposition to this amendment. Delegates Danhof, as chairman of the committee, and Allen and Ford have expressed my thinking so clearly, I shall be particularly brief.

This amendment, if adopted, would be a step backward from the present constitution we have. While we aren't getting everything every one of us wants, I certainly hope that we would not take this step backward which would have the tendency — in fact, would remove the concept of statewide justice based on electing judges on a one man, one vote basis. It would be particularly objectionable because the standard of the size of the districts is as near equal as possible, recognizing judicial circuits. While none of us knows what that would be, we do know, for sure, that these districts would not be

as mathematically equal in population as is our present statewide system, where each person's vote is equal. This is particularly significant because it looks as though the court in the years to come will have the job of judging and working on the problem of apportionment and equality of voting rights. And I, for one, want to see that done by a court that itself is based on equality at the ballot box.

Our present court system has proven the test of time and I see no reason to make this leap — as Dr. Pollock said, a step in the dark — I say, a step in the dark, backwards. I therefore urge a no vote on the amendment.

PRESIDENT NISBET: The Chair will recognize Mr. Bonisteel.

MR. BONISTEEL: Mr. President, delegates of the convention, as you know, I have been for the appointive system and I have argued for it and my name has appeared on the proposals and amendments suggesting an appointive plan. All the arguments that have been made here this morning relating to the so called district plan are the best arguments that I can think of for an appointive system.

Let's be honest about this, at least honest with ourselves. You cannot completely escape politics under any plan, and the philosophy of the district plan is not a philosophy that will get you the best representatives from the entire state of Michigan. We talk about a district plan. May I call your attention to this: that if any group should desire to take over our courts in this state, I can think of no easier plan to take them over than to go from one district to another district and capture those districts one at a time until the philosophy upon the courts of this state would be so impressed that we would have no opportunity to undo the wrong.

As a matter of fact, Mr. President, I believe that all of the people from all the state should have an opportunity to vote on the nominees. If a man is going to be a candidate, and if I am correct in my statement that you cannot completely divorce the judgeships from politics in this state under any system — appointive or elective — I say to you that we have the responsibility then of giving to the people of Michigan a program and a plan espoused by some organization of a political nature, such as we have now under the present plan, whereby men are nominated in party conventions and, even though they run on a nonpartisan ballot, at least they have the financial support, at least they have some group of people responsible partywise for their selection; whereas under this proposed nonpartisan plan, who is going to finance it? Where is the money going to come from? And how is it going to be done so that we will escape this thing that I am talking about, namely, the opportunity for those who desire to do so, to take over the judiciary in this state piecemeal, a part at a time?

I would say to you, Mr. President, that I have studied all these plans: the appointive plans, the elective plans, the so called Illinois plan. I have watched this over many, many years. And based upon my experience, even though I think there are some flaws in the plan that has been submitted by the committee, if I had to make a choice as between the committee and the districting plan, I would make the choice in favor of the committee plan; and if I still had a choice, I would still go to some form of an appointive system, because I believe that will produce the best results and would put the spotlight upon everybody concerned in making the appointment and the selection of judges. I am in favor of the committee report and I am unalterably opposed to the district plan. (applause)

PRESIDENT NISBET: There are 3½ minutes. There are 3 speakers. The Chair recognizes Mr. Iverson.

MR. IVERSON: Mr. President, members of the convention, I will try and take 1/3 of that time. In answer to Mr. Allen, he raises the question that by the district plan we reduce the effect of the minority party in a given area. How he arrives at this conclusion is more than I know, especially when we're striving to have a nonpartisan primary and election. It seems to me that this very situation would give the minority party its proper voice.

Now, with respect to the Illinois plan, Mr. Ford must have listened to a different witness than I did because he stated that the witness, the president of the bar association of Illinois, stated that he was opposed to the district plan. And I think on first reading I quoted testimony of this witness in which he said it had worked entirely properly in the state of Illinois for a number of years, and the only thing that they were doing in a new judicial article was changing the districts, allowing 3 from Chicago and 4 from the rest of the state. But the question was asked him as to whether it worked properly or whether the judges were balkanized. He said it worked entirely properly and that they were — absolutely were not balkanized.

Now, some of the delegates here today have stated that there has been criticism of the present system which we have and sure enough, there has. The papers have been full of it in months past. The people have been dissatisfied with a partisan nomination and a nonpartisan election. And let me say to you, as I said before, that if anyone could show to me how we could conduct a nonpartisan primary on a statewide basis and accomplish what we want, I'd be for it. No one has come up with that plan. You simply take the shortest route and say it's the only way it can be done. I say that the district plan will solve this situation.

Now in answer to Mr. Romney, he stated that this is strictly a partisan approach. Now let me say, for Mr. Romney's information, that for one of the sponsors at least on this, this is not done for a partisan purpose. It's the farthest from my mind, at least, and I think it is from the rest. And let me say to Mr. Hodges and Mr. Danhof, who have boldly stated to this convention that if you want to defeat this constitution, adopt this district plan, let me say that I am getting just a little tired of delegates in this convention stating that every time we pass something in this convention that it's going to defeat this constitution. If we take as fact the statements of some of the delegates here as to things that we have passed, how it's going to affect the constitution as we pass it, let me say this: that we might as well pass this and let the people defeat the whole thing if that's the basis upon which they do it.

PRESIDENT NISBET: Time has expired. The question is on the amendment offered by Mr. Goebel. Mr. Downs.

MR. DOWNS: I move that Mr. Iverson be given time to finish his statement.

PRESIDENT NISBET: He finished his statement. Mr. Chase will read the amendment.

SECRETARY CHASE: The amendment offered by Messrs. Goebel, Mosier and others:

[The amendment was again read by the secretary. For text, see above, page 2723.]

PRESIDENT NISBET: The yeas and nays have been demanded. Those in favor of the amendment will vote aye. Those opposed will vote nay.

MR. TWEEDIE: Mr. President, I wish to abstain from voting.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Goebel and others. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—56

Anspach	Haskill	Pugsley
Batchelor	Heideman	Radka
Beaman	Higgs	Richards, J. B.
Bentley	Howes	Richards, L. W.
Blandford	Hoxie	Rood
Boothby	Hubbs	Rush
Brake	Hutchinson	Shackleton
Butler, Mrs.	Iverson	Shaffer
Conklin, Mrs.	Karn	Shanahan
Dehnke	Kirk, S.	Sharpe
Dell	Knirk, B.	Sleder
Doty, Dean	Leibrand	Stafseth
Doty, Donald	McAllister	Stamm
Erickson	Mosier	Stevens
Farnsworth	Nisbet	Thomson
Finch	Page	Turner

Goebel	Plank	White
Gover	Powell	Wood
Habermehl	Prettie	

Nays—74

Allen	Ford	Norris
Andrus, Miss	Gadola	Ostrow
Austin	Garvin	Perlich
Baginski	Hanna, W. F.	Perras
Balcer	Hannah, J. A.	Pollock
Barthwell	Hart, Miss	Rajkovich
Binkowski	Hatch	Romney
Bledsoe	Hatcher, Mrs.	Sablich
Bonisteel	Hodges	Seyferth
Bradley	Jones	Snyder
Brown, G. E.	Judd, Mrs.	Staiger
Buback	Kelsey	Sterrett
Cudlip	Krolikowski	Stopczynski
Cushman, Mrs.	Kuhn	Suzore
Danhof	Lawrence	Tubbs
DeVries	Leppien	Upton
Douglas	Lesinski	Van Dusen
Downs	Madar	Walker
Durst	Mahinske	Wanger
Elliott, A. G.	Marshall	Wilkowski
Elliott, Mrs. Daisy	Martin	Woolfenden
Everett	McGowan, Miss	Yeager
Faxon	McLogan	Young
Figy	Millard	Youngblood
Follo	Murphy	

SECRETARY CHASE: On the amendment the yeas are 56; the nays are 74. (applause)

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Danhof offers the following amendment:

1. Amend page 1, line 2, [section a] after "at" by striking out "a nonpartisan statewide election" and inserting "nonpartisan elections"; so the langauge will read, "The supreme court shall consist of 9 justices to be elected at elections as provided by law."

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. Chase, I think you should have the words "nonpartisan elections as provided by law."

SECRETARY CHASE: Thank you, Mr. Danhof.

PRESIDENT NISBET: Mr. Chase will read it again.

SECRETARY CHASE: The language will then read, "The supreme court shall consist of 9 justices to be elected at nonpartisan elections as provided by law."

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, in light of the action just taken, I would offer these amendments for 2 reasons: first, it has been pointed out that it is possible that a primary election might be needed. I did not think so at the time I offered this original proposal, but if, in the opinion of the legislature, it is needed, I think the language now provides that it can be had upon passage of law. Further, it gives the legislature the discretion that it now has when it talks in the present constitution about nonpartisan elections. I think that this leaves it as we now have it. I think that we take out a restrictive measure. I would urge that the amendment in this particular case be adopted and I would hope that the debate would be very limited on this particular amendment.

PRESIDENT NISBET: The question is on the amendment. Mr. Radka.

MR. RADKA: I would like to direct a question, through the Chair, to Mr. Danhof.

PRESIDENT NISBET: If Mr. Danhof cares to answer.

MR. RADKA: I note, Mr. Danhof, that this is your amendment. I am wondering if this is your personal amendment or an amendment of the committee.

MR. DANHOF: Mr. Radka, when it states it is my amendment, it is my amendment. When it goes for the committee it will so state. This is my personal amendment. The committee made no consideration of this. The amendment is offered by me personally and not as a committee amendment.

MR. RADKA: I would like to ask another question, through the Chair. Was the substance of this amendment discussed in your committee?

MR. DANHOF: It was not.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: Mr. President and fellow delegates, I'd like to ask Mr. Danhof a question about what this means here. I am wondering whether what he is after here is allowing for the possibility of districting by the legislature.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: It might be possible, Mrs. Cushman, but I leave it to the wisdom of the legislature. "As provided by law," means it would have to pass the legislature and if it were done, it would have to get by the signature of the governor. I point out these safeguards. Again, I think we are going back to allowing the greatest latitude. I will agree with you that it is possible.

MRS. CUSHMAN: In that case I would oppose it. Thank you.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Danhof. Mr. Ford.

MR. FORD: At this point, Mr. President and members of the convention, I have to oppose the Danhof amendment because in light of everything that has been said here this morning, this is a direct retreat from the arguments offered by Mr. Danhof himself. I think originally this amendment was put on the table up there on the assumption that it might come up before the vote on the district plan. It might sufficiently sweeten the kitty with respect to the judiciary article as adopted in committee of the whole previously so that some of the district plan supporters would come over and vote against the district system as such. Now, the sweetening is here. It was designed for sweetening and it is still sweetening because it is a method of saying: well, you see, we didn't get the district plan down there in Lansing this time but at the next session of the legislature we'll put her in and you don't have to worry about that supreme court decision having to do with apportionment because we'll take care of it when the legislature meets the next time.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I demand the yeas and nays on the amendment.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand supported? Sufficient number up. Mr. Downs.

MR. DOWNS: I wish to speak strongly against the amendment. We have just previously supported action to assure statewide justices. I hope that we do not retreat from that by adopting the amendment. I therefore urge a no vote on the amendment for the same reasons that we urged a no vote on the previous amendment. Thank you.

PRESIDENT NISBET: Mr. Everett.

MR. EVERETT: Mr. President, I support the amendment of Mr. Danhof and I would point out that in his argument before in opposing the district plan, he said then that we would have been freezing a district plan in; that we should leave to the legislature the latitude to determine the best plan.

I would also remind you that in committee of the whole Mr. Ford and others offered an amendment to propose exactly this and they got up on this floor and argued that the legislature should have the right to adopt the district plan if the legislature wants to do it. I'm not in favor of the district plan and I would hope the legislature would not do it. But I think, as a matter of draftsmanship for the constitution, as a matter of latitude for the people of this state, we should adopt this amendment and then permit the court to develop as it may in the years to come.

PRESIDENT NISBET: The question is on the amendment by Mr. Danhof. The yeas and nays have been ordered. Those in favor of the amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas — 72

Anspach	Goebel	Prettie
Batchelor	Gover	Pugsley
Beaman	Gust	Radka
Bentley	Habermehl	Richards, J. B.
Blandford	Hanna, W. F.	Richards, L. W.
Boothby	Hannah, J. A.	Rood
Brake	Hatch	Rush
Brown, G. E.	Heideman	Seyferth
Conklin, Mrs.	Higgs	Shaffer
Danhof	Howes	Shanahan
Dehnke	Hoxie	Sharpe
Dell	Hubbs	Sleder
DeVries	Hutchinson	Stafseth
Donnelly, Miss	Iverson	Staiger
Doty, Dean	Kirk, S.	Sterrett
Doty, Donald	Knirk, B.	Stevens
Durst	Koeze, Mrs.	Tubbs
Elliott, A. G.	Kuhn	Turner
Erickson	McAllister	Tweedie
Everett	Nisbet	Upton
Farnsworth	Page	Van Dusen
Figy	Perras	White
Finch	Plank	Wood
Gadola	Powell	Yeager

Nays — 53

Andrus, Miss	Garvin	Millard
Austin	Hart, Miss	Mosier
Baginski	Haskill	Murphy
Balcer	Hatcher, Mrs.	Norris
Barthwell	Hodges	Perlich
Binkowski	Jones	Pollock
Bledsoe	Judd, Mrs.	Romney
Bonisteel	Kelsey	Sablich
Bradley	Krolikowski	Snyder
Buback	Lawrence	Stopczynski
Cudlip	Leibrand	Suzore
Cushman, Mrs.	Leppien	Walker
Douglas	Lesinski	Wanger
Downs	Madar	Wilkowski
Elliott, Mrs. Daisy	Mahinske	Woolfenden
Faxon	Marshall	Young
Follo	McGowan, Miss	Youngblood
Ford	McLogan	

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Danhof, the yeas are 72; the nays are 53.

PRESIDENT NISBET: The amendment is adopted. The next amendment will be read.

SECRETARY CHASE: Mr. Danhof offers the following amendment:

1. Amend page 1, line 4, [section a] after "time.", by striking out "Each political party at party convention may nominate one candidate for election for each position to be filled. Any" and inserting "Nominations for justices of the supreme court shall be in the manner as provided by law, except any"; so that the language will then read:

> Nominations for justices of the supreme court shall be in the manner as provided by law, except any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy. . . .

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, it was brought to my attention that the language that we used, "Each political party at party convention" was in essence what the statute is at the present time. I feel that to freeze this particular matter for all time in here would not be advantageous. I think that we will retain what is good by allowing an incumbent justice to file an affidavit for reelection and allow the legislature to fix the manner, as they now do, for the nomination of offices of supreme court justices. We do provide that any incumbent justice may file an affidavit for reelection and further, "Any person otherwise qualified" can become a candidate in the manner stated in the last sentence. I think this makes a better document. I think it allows us to return to our basic premise. At this time I would urge the adoption of the amendment.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I rise to support Mr. Danhof's amendment at this point, recognizing that we are now evolving closer to the language that resulted from the several amendments to the 1908 constitution and giving us the language that we are now functioning under. The legislature at the present time would have the power to change the manner of nomination in party conventions. It hasn't seen fit to do so and there has been no great demand at that level for it. For that reason and for the reason that there should always be room for improvement, I think that this is an improvement in the language we've adopted.

PRESIDENT NISBET: The question is on the Danhof amendment. Those in favor will say aye. Opposed, no.

The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Messrs. Bonisteel, Cudlip and Wanger offer the following amendment:

1. Amend page 1, line 1, [section a] after "of" by striking out "9" and inserting "8"; and on line 2, after "law.", by inserting "A vacancy hereafter created as the result of the death, retirement or resignation of one incumbent justice shall not be filled.".

PRESIDENT NISBET: The Chair recognizes Mr. Cudlip.

MR. CUDLIP: Mr. President and members of the convention, Mr. Bonisteel and I introduced this amendment before and Delegate Wanger was interested in this matter. It simply provides that we retain our present court of 8 and then when there is a permanent vacancy of one, that vacancy shall not be filled. The effect is to reduce this court permanently to 7 members. We do not need 9 members on the supreme court of Michigan. We do not need 8. The establishment in the proposed constitution by this convention of a court of appeals certainly is reason enough to reduce the number of the bench. Most large states have 7 or less justices.

I was a member of the judicial branch committee. I have practiced law for just about 36 years. I've practiced law all over the state. I know of no reason at all why that court needs to consist of 9 men. Eight would be too many, as I said, with the new system that you have proposed. And I think that it's sensible and it's also economical and it doesn't deprive anybody on the bench of any right he has now because it's only the first permanent vacancy that will not be filled. I yield to Mr. Bonisteel, if I may, Mr. President.

PRESIDENT NISBET: Mr. Bonisteel.

MR. BONISTEEL: Mr. President and fellow delegates, I think that Delegate Cudlip has stated the proposition about as clearly as anyone can state it. I think it might be desirable to emphasize, however, that under the new appellate court plan there should be no necessity in the future for having 9 members or even 8 members, as has been suggested. If the statistics which have been furnished this convention in the past indicate anything at all, the number of opinions which are being written, the number of cases which are being handled by the present supreme court are greatly reduced over what they were 15 or 20 years ago. I believe this is a move in the right direction and I believe it's in the interest of the people of the state of Michigan to have a court of this size, particularly in view of the fact that we're going to have an appellate court. And I would strongly urge, where possible, that we give consideration to this amendment.

PRESIDENT NISBET: The Chair recognizes Mr. Barthwell.

MR. BARTHWELL: Mr. President and fellow delegates, as on first reading, I am definitely of the opinion that we only needed 7 members on this court, as a result of the testimony that was given before our committee and the research that was done on the workload of the justices at present, and it seems to have a continuing trend downward. I think that one of the problems with the members of the committee was that they did not want to take office away from a present officeholder. I think this amendment clearly solves this problem. Therefore I rise to support this amendment.

PRESIDENT NISBET: Mr. Tubbs.

MR. TUBBS: Mr. President, the only point in the Goebel amendment that I was in favor of was the reduction of the court to 7. I favored it in committee, I favored it in committee of the whole and I now favor it. I am in favor of this amendment.

PRESIDENT NISBET: Mr. Faxon.

MR. FAXON: I want to demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Is that demand supported? Sufficient number up. Mr. Danhof.

MR. DANHOF: Mr. President, I'll make it very short. We went through committee of the whole with this. We went through the convention one way or another. It's a numbers game. You play 7, you play 8, you play 9. The committee recommended 9. If you will understand that many times, if you have 7 and a judge is disqualified, as you now have in a number of cases, such as with the former attorney general, you'd be down to 6. The committee was of the opinion 9 would be best. I would urge the rejection of the amendment so we can get on.

PRESIDENT NISBET: The question is on the amendment. Mr. Bledsoe.

MR. BLEDSOE: Mr. President, fellow delegates, I wonder if it has occurred to you just what happens when we make the issue of cutting down the number of the supreme court by one judge, what that will mean to getting litigation of the people through the courts? The delay in getting cases of the public and of the people of this commonwealth to our appellate and supreme courts is the type of delay that almost amounts to a lack of justice being obtained for the litigants. Now, what is the practical effect of cutting down your judges, reducing them on such a narrow issue as this? I am going to tell you just exactly what it means; and I am telling you this — if I may use the term — from the horse's mouth. Somebody has asked me which horse. I'm not at liberty to say that. (laughter) But here is what it means: it means that you get one judge opinions. When they get overloaded you don't get the consensus of your judges, you don't get the full benefit of your bench. Now, those of us who wonder about some of these opinions that come back from the supreme court when you know you have cited cases that have come down, that they have sent, that you kept your pleadings and your briefs right in the teeth of former decisions, you wonder when they said this in that case, how can they say this now. I want to say to you that I have good information as a result of experience, that that is the direct result of one opinion decisions. Now, if we're going to hazard that just for one judge, the price is too high for those who want our issues determined in the supreme court. And they are very important, or you wouldn't be going there.

PRESIDENT NISBET: Miss Donnelly.

MISS DONNELLY: I'd like to say that I support everything that Mr. Bledsoe has said, if it was as it is at the moment. However, we have created 9 intermediate court of appeals justices. We have said nothing shall go to the supreme court. What hits the supreme court now will be up to them. If they don't want to hear the case, they won't hear the case; you can't make them hear the case. I think that it's absolutely unnecessary when we're going to have, primarily, a rulemaking body, which the supreme court is going to be under our new constitution, as far as I can see, and the intermediate appellate court is going to do most of the judicial work. There, I think we're going to need the manpower because that's where the work apparently is going to be done. The work is not going to be done on the supreme court level any more. I, therefore, wholeheartedly support the amendment and say this is the one spot we can start cutting down the state's expenditure of money.

PRESIDENT NISBET: The yeas and nays have been ordered. The question is on the amendment offered by Mr. Bonisteel and others. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—84

Allen	Gust	Powell
Andrus, Miss	Habermehl	Pugsley
Anspach	Hanna, W. F.	Radka
Barthwell	Hannah, J. A.	Rajkovich
Batchelor	Haskill	Richards, L. W.
Beaman	Heideman	Rood
Bonisteel	Hoxie	Rush
Boothby	Hubbs	Seyferth
Brake	Hutchinson	Shackleton
Butler, Mrs.	Judd, Mrs.	Shaffer
Conklin, Mrs.	Karn	Sharpe
Cudlip	Kirk, S.	Sleder
Cushman, Mrs.	Knirk, B.	Stafseth
Dehnke	Koeze, Mrs.	Staiger
Dell	Krolikowski	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Lawrence	Stevens
Doty, Dean	Leibrand	Thomson
Doty, Donald	Leppien	Tubbs
Durst	Lesinski	Turner
Erickson	Martin	Tweedie
Everett	McAllister	Upton
Farnsworth	McLogan	Van Dusen
Figy	Millard	Wanger
Finch	Mosier	White
Gadola	Nisbet	Wood
Goebel	Plank	Woolfenden
Gover	Pollock	Yeager

Nays—45

Austin	Ford	Ostrow
Baginski	Garvin	Page
Balcer	Hart, Miss	Perlich
Bentley	Hatch	Perras
Binkowski	Hatcher, Mrs.	Prettie
Blandford	Howes	Romney
Bledsoe	Iverson	Sablich
Bradley	Jones	Shanahan
Brown, G. E.	Kelsey	Snyder
Buback	Madar	Stopczynski
Danhof	Mahinske	Suzore
Downs	Marshall	Walker
Elliott, A. G.	McGowan, Miss	Wilkowski
Faxon	Murphy	Young
Follo	Norris	Youngblood

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Bonisteel, Cudlip and Wanger, the yeas are 84; the nays are 45.

PRESIDENT NISBET: The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Kuhn and Mr. McAllister have offered the following amendment:

1. Amend page 1, line 11, [section a] after "equal to" by striking out "3" and inserting "one"; so the language will then read:

> Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by registered electors of this state in a number equal to one per cent of the total vote cast for the office of governor at the last previous election.

PRESIDENT NISBET: The Chair recognizes Mr. Kuhn.

MR. KUHN: Mr. President and members of the convention, on a statewide basis, 3 per cent based on a 2 million vote for governor, would make this 60,000 good signatures. You heard during the debate on the subject of initiative and referendum how difficult it is. Well, I think it's almost impossible for one individual to get that many. For example, today I think you only need around 14,000 good signatures to run for the office of governor for the state of Michigan. Now, it seems to me that if we leave this at this one per cent, that we would not be asking too much of our people, and anybody that would want to be a candidate. We don't want to make it too easy, but 3 per cent, I submit to you, is totally impossible unless you'd get a large pressure group or something of that nature.

You'd have to have a minimum of 60,000 good signatures. It's possible that an election for governor would have 3 million voters, like they did in the last election, which would require you to have over 90,000 good signatures. I think this would help make our supreme court a little better.

PRESIDENT NISBET: The Chair recognizes Mr. McAllister.

MR. McALLISTER: Mr. President, fellow delegates, one of the things we've been complaining about is the cost of running for the supreme court. To require an individual to get 90,000 signatures, or more, makes the task of running for that office almost an impossibility. We want to be fair all the way. I think this amendment should be supported so that anyone who wants to run for the supreme court will not have his hands tied when he starts.

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, I would oppose the amendment. This is not necessarily to be an easy vehicle for an individual to ride. It is a method. If a person has enough statewide support that he can gather the number of names as Mr. Kuhn has stated, then he should be entitled to a place on the ballot. It was deliberately designed to handle the individual who would have, by reason of some activity other than partisan politics, a following throughout all of the state and would be able to secure the amount of signatures required. This is not necessarily made for an easy type of method of nomination, but it is a method which we believe should be included. If it is made too easy, we will have a number of name candidates who will do nothing more than try to advertise in a particular locale. By making it 3 per cent, we realize it will take 75,000 to 90,000 names; this will require considerable support for the individual and will guarantee that he will be a bona fide candidate and not somebody trying simply to run for the fun of it. I would urge the rejection of the amendment and that the committee proposal stand.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Kuhn and Mr. McAllister. Mr. Kuhn.

MR. KUHN: I'd like to just submit one further bit of statistical information for this convention. I have a book here that is published for the '62 election. To run for governor of the state of Michigan on the Republican ticket you need 14,542 signatures. The maximum you can get — the maximum you can get to run for the governor of the state of Michigan and submit it to the proper officials, is 58,165. That is the maximum. This would be way lower than the minimum you'd need to run for the supreme court because you need almost 90,000 good signatures. I submit to you that you're putting a joke in the constitution. This is not realistic. We do not want to make it easy, but let's not make it impossible. I demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand seconded? Sufficient number up. Those in favor of the amendment —

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I rise to oppose the amendment. I'd like to point out to the delegates a statistic from the other side: that at the present time, we have provided that you could have 5 nominees for each vacancy just from the political parties, plus the incumbent is 6, and then if you want to make it real easy by reducing the number, you can have another 15 or 20; and all of the things that you have heard about the weakness of a bedsheet ballot or a large number of candidates become magnified when you put them on a statewide basis. And what you're asking to do here, when you make it too easy to get your name on that ballot, is set up a situation with 15 or 20 candidates for the supreme court for the people to pick and choose from. I strongly urge you to vote no on this amendment.

PRESIDENT NISBET: The question is on the amendment. The yeas and nays have been ordered. Those in favor will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—50

Anspach	Haskill	Radka
Bonisteel	Higgs	Richards, L. W.
Boothby	Hood	Rood
Bradley	Judd, Mrs.	Rush
Conklin, Mrs.	Kelsey	Shackleton
Cushman, Mrs.	Kirk, S.	Shaffer
Dehnke	Koeze, Mrs.	Shanahan
Donnelly, Miss	Krolikowski	Sharpe
Doty, Donald	Kuhn	Stamm
Erickson	Leibrand	Turner
Everett	McAllister	Tweedie
Faxon	Mosier	Upton
Follo	Nisbet	Wood
Gadola	Norris	Woolfenden
Gover	Powell	Yeager
Gust	Prettie	Young
Habermehl	Pugsley	

Nays—75

Allen	Finch	Millard
Andrus, Miss	Ford	Murphy
Austin	Garvin	Ostrow
Baginski	Goebel	Page
Balcer	Hanna, W. F.	Perlich
Barthwell	Hannah, J. A.	Perras
Beaman	Hart, Miss	Plank
Bentley	Hatch	Pollock
Binkowski	Hatcher, Mrs.	Rajkovich
Blandford	Heideman	Richards, J. B.
Bledsoe	Howes	Romney
Brake	Hoxie	Sablich
Brown, G. E.	Hubbs	Snyder
Buback	Hutchinson	Stafseth
Cudlip	Iverson	Staiger
Danhof	Jones	Sterrett
Dell	Karn	Stevens
Doty, Dean	Knirk, B.	Stopczynski
Douglas	Leppien	Suzore
Downs	Lesinski	Thomson
Durst	Madar	Tubbs
Elliott, A. G.	Marshall	Van Dusen
Elliott, Mrs. Daisy	Martin	Walker
Farnsworth	McGowan, Miss	Wanger
Figy	McLogan	Youngblood

SECRETARY CHASE: On the amendment offered by Mr. Kuhn and also by Mr. McAllister, the yeas are 50; the nays are 75.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Habermehl offers the following amendment:

1. Amend page 1, line 8, [section a] after "term.", by striking out the balance of the section; which reads:

Any person otherwise qualified to be a supreme court justice may become a candidate for election upon filing a nominating petition, in the form and manner prescribed by law, signed by registered electors of this state in a number equal to 3 per cent of the total vote cast for the office of governor at the last previous election.

PRESIDENT NISBET: The Chair recognizes Mr. Habermehl.

MR. HABERMEHL: Mr. President, fellow delegates, it looks like we might get into a numbers game here trying to guess how many signatures might be needed 50 years from now to nominate a supreme court justice. In the sentence just before this, we provided "Nominations for justices of the supreme court shall be in the manner as provided by law except . . ." and then we put in the important provision that an incumbent justice may nominate himself. It seems to me we've said everything that needs to be said in this section when we reach that word "term" in line 8. This will allow the legislature to adjust the number of signatures that might be needed as the population may increase or decrease. Having reached the word "term," I see no point whatsoever in the balance of the section.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, I just have been handed this particular amendment. I think that this provision is needed. It gives an added constitutional guarantee as a right to be nominated. We just had an amendment to make it one per cent. I might be somewhat tempted to say that the legislature, under pressure, might reduce it from 3 to 1 per cent, assuming they even provided for this particular method. It is possible that they would not if we strike it out. I think it was previously stated that we have overcome some of the evils of the present system. One of these is to allow for the method of nomination by, in effect, the use of a petition — the petition form. I feel that this is a provision which gave some degree of latitude such as we have done for the incumbent justice. Personally, I urge the defeat of the amendment and that we allow the matter to stand as it is.

PRESIDENT NISBET: The question is on the amendment. Mr. Faxon.

MR. FAXON: Mr. President and fellow delegates, as I understand it, we've already adopted a sentence which reads, "Nominations for justices of the supreme court shall be in the manner as provided by law. . . ." I am supporting Mr. Habermehl here because we've already provided for this in that sentence that we've amended. And if we take out this excess language at the end, we're providing for some degree of flexibility. I agree with Mr. Kuhn that 3 per cent is a very large number. Times may change. Let's leave it open for the legislature to provide for how this is to be done and support this amendment.

PRESIDENT NISBET: Mr. Richards.

MR. L. W. RICHARDS: Mr. President. I rise to support this amendment due to the fact that last week some of these people who are opposed to it had a lot of trust in the legislature relative to earmarking of funds for schools. If they have that type of trust, certainly they should have this kind of trust to handle this kind of situation.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Habermehl.

DELEGATES: Division.

PRESIDENT NISBET: A division has been requested. Is the demand seconded? Sufficient number up.

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I'm sorry. I was at the mike before. I walked away to write an amendment. I wish to support the amendment because again we're getting closer to the kind of flexibility that will make it possible to change in the future if the plan that we adopt does not prove to be workable.

PRESIDENT NISBET: Those in favor of the amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Habermehl, the yeas are 85; the nays are 34.

PRESIDENT NISBET: The amendment is adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Ford offers the following amendment:

1. Amend page 1, line 4, after "law" (in the adopted amendment) by changing the comma to a period and striking out the balance of the sentence.

PRESIDENT NISBET: The Chair recognizes Mr. Ford.

MR. FORD: Mr. President, members of the convention, the effect of this amendment now would leave entirely to the legislature all of the methods of nomination of candidates to the supreme court. Now, the legislature might from time to time utilize all of the methods that have been suggested here; they might utilize any 2 or 3 of them or any 1 of them. But they would be in a position to judge, after an election in which the method was used, whether it was an effective and a proper one and to make a change.

Now, we might find in the future that permitting a supreme court justice to simply nominate himself could lead to a difficult situation. I can't relate a set of facts that would show this to be a difficult situation and I can't say that I object strongly to the concept of permitting a supreme court justice to renominate himself in this manner, but the fact remains that we are locking this into the constitution as a method. If it proves to have a side effect that we cannot foresee at this time, the only way to correct it is by constitutional amendment. We have operated for some time by trusting the legislature to provide a method of nomination and I think that the proper place to put in the language that we are here striking would be in the form of legislation providing this as an alternative method or supplemental method of nomination. But if this method of nomination is to be utilized, it should be utilized as a statutory vehicle and not frozen into the constitution because, like any other method of nomination, it may be good today and it may not serve our purposes in the future. I think that we've had it ably demonstrated, by the advocates of every single plan that's been presented for nomination, that no one plan is so perfect that it can't stand change. I think we ought to leave the flexibility in and leave it to the legislature.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, members of the convention, I think now my distinguished vice chairman has gone a little far. We have previously provided in Committee Proposal 96 that other judges may nominate themselves by the use of affidavits. This would strike from this provision that very important aspect of this particular section. If there was one thing on which there was unanimity, including even the supporters of the district plan, it was that incumbent justices should have the opportunity to file for renomination without having to go back before the party convention. Therefore, I urge very strongly that this particular amendment be defeated. I hope this is the end of the amendments on this particular section and we can proceed to get through Committee Proposal 91 and go on with the executive article. You've got 21 sections to cover yet today.

PRESIDENT NISBET: Mr. Higgs.

MR. HIGGS: Mr. President, can we divide this question to separate that part which deals with the affidavit that Mr. Danhof feels should be retained?

PRESIDENT NISBET: It is not subject to division. This is a motion to strike out the sentence, Mr. Higgs.

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I don't wish to speak again. I'd like to demand the yeas and nays.

PRESIDENT NISBET: The yeas and nays have been demanded. Is that demand seconded?

MR. DEHNKE: Mr. President.

PRESIDENT NISBET: Sufficient number up. Judge Dehnke.

MR. DEHNKE: I want to emphasize, Mr. President and delegates, the importance of this part of the proposal. We've heard a good deal about the unfortunate necessity that an incumbent may face in asking the convention of a political party to renominate him when that party may be resentful over some of the rulings that he has rendered. This was put in for the very purpose of making it unnecessary for him to do that. I hope we realize that in voting on this amendment.

PRESIDENT NISBET: The yeas and nays have been demanded. Mr. Romney.

MR. ROMNEY: Mr. President, it seems to me that this is really the biggest single improvement we're making in the supreme court setup. And for the reasons cited by Judge Dehnke, I hope the amendment will be defeated.

PRESIDENT NISBET: The question is on the amendment. The yeas and nays have been demanded. Those in favor of the amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—29

Binkowski	Jones	Snyder
Bledsoe	Kelsey	Stopczynski
Douglas	Madar	Suzore

Faxon	Marshall	Tubbs
Finch	Murphy	Walker
Ford	Norris	Wilkowski
Garvin	Perlich	Wood
Hart, Miss	Sablich	Young
Haskill	Shackleton	Youngblood
Hood	Shanahan	

Nays—96

Allen	Farnsworth	Mosier
Andrus, Miss	Figy	Nisbet
Anspach	Follo	Page
Austin	Gadola	Perras
Baginski	Goebel	Plank
Balcer	Gover	Pollock
Barthwell	Gust	Powell
Batchelor	Habermehl	Prettie
Beaman	Hannah, J. A.	Pugsley
Bentley	Hatch	Radka
Bledsoe	Heideman	Rajkovich
Bonisteel	Higgs	Richards, L. W.
Boothby	Howes	Romney
Bradley	Hoxie	Rood
Brake	Hubbs	Rush
Brown, G. E.	Hutchinson	Seyferth
Buback	Iverson	Shaffer
Butler, Mrs.	Judd, Mrs.	Sharpe
Conklin, Mrs.	Karn	Stafseth
Cudlip	Kirk, S.	Staiger
Cushman, Mrs.	Knirk, B.	Stamm
Danhof	Koeze, Mrs.	Sterrett
Dehnke	Krolikowski	Stevens
Dell	Kuhn	Thomson
Donnelly, Miss	Lawrence	Turner
Doty, Dean	Leibrand	Tweedie
Doty, Donald	Leppien	Upton
Durst	Martin	Van Dusen
Elliott, A. G.	McAllister	Wanger
Elliott, Mrs. Daisy	McGowan, Miss	White
Erickson	McLogan	Woolfenden
Everett	Millard	Yeager

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Ford, the yeas are 29; the nays are 96.

PRESIDENT NISBET: The amendment is not adopted. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I believe that there are 2 more amendments pending. I would move to limit debate on each of these remaining amendments to 10 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen. Those in favor will say aye. Opposed, no.

The motion prevails. The secretary will read the next amendment.

SECRETARY CHASE: Mr. Garry Brown offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The supreme court shall consist of 9 justices to be elected by the electors of the state. The term of office shall be 8 years. Not more than 3 terms of office shall expire at the same time.

Justices of the supreme court shall be nominated at party conventions for election on a nonpartisan statewide basis as provided by law. At the general election preceding the expiration of the term of office of any justice and every 8 years thereafter so long as he retains his office, every justice so elected shall be subject to approval or rejection in a manner and form provided by law. Justices of the supreme court in office at the time this constitution takes effect as a result of having been elected shall be eligible to retain their office in accordance with this section.".

PRESIDENT NISBET: The Chair recognizes Mr. Brown.

MR. G. E. BROWN: Mr. President, members of the convention, I shall be very brief and I will even go one step further than Mr. Van Dusen did and move that the debate be limited to 5 minutes on this amendment. The committee proposal as presently adopted has been referred to as a murky gruel. The amendment which is presently on the board and which you are now being asked to consider is a plan which encompasses, in my opinion, the best features of an appointive system and yet permits the electorate to initially select and periodically review the judicial activity of each supreme court justice. The elements of the plan, since it was debated in committee of the whole, are well known. It provides first of all an even shake — as Mr. Danhof has referred to it — an even steven chance of judicial candidates for election: no incumbency designation initially. Secondly, it provides for nomination for such even shake election by party convention; as good a method to procure good candidates as any appointive or elective system so far suggested. Thirdly, at the expiration of the term to which a justice has been elected, the electorate reviews his activity as a justice rather than his popularity. Without going further into the substance of the amendment because, as I say, it has been debated before, I am sure that everyone is familiar with it.

I would only want to say to the Republicans that a select committee studied all supreme court plans that had been offered. After giving much thought to the subject, this committee recommended the plan incorporated in the present amendment. By various, by invidious methods, those espousing pet peeves or briefs dissected the anatomy of the plan and reassembled its body without incorporating its heart and mind. I therefore say I have only contempt for your action and superficial deliberation in thoughtlessly undoing that which you originally, deliberately, decided to do.

To the Democrats, I can only say: your great judgment and profundity in favor of judicial integrity stand naked and stripped of the cloth of purism. You wish to maintain party control over those jurists you have placed on the bench and prefer a review of a justice's popularity rather than his judicial integrity and sagacity. The action of this convention on this subject only confirms my belief that, like our 4 legged counterparts, you can lead a delegate to the water of wisdom but you can't make him think. Thank you.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. President, it is indeed hard to follow the eloquent statements made by the gentleman from Kalamazoo. I should only like to point out that this particular amendment runs the incumbent against his record and not against his opponent. I think that the actions of this particular convention have indicated that they are in favor of an opponent in the form of a person. I therefore feel that this has been accomplished and I cannot support the amendment offered by my good friend, Garry Brown.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I urge that you vote no on this amendment. It would have the voters voting much the same as if they were looking at a maladjusted television screen, voting against a ghost rather than participating in an election with real live people.

PRESIDENT NISBET: The question is on the amendment of Mr. Brown. Those in favor will say aye. Opposed, no.

The amendment is not adopted. The next amendment.

SECRETARY CHASE: Mr. William Hanna offers the following amendment:

1. Amend page 2, line 6, [section d] after "state" by changing the period to a colon and inserting "Provided however, That the legislature may suspend or amend any rule by a 2/3 vote of each house of the legislature.".

PRESIDENT NISBET: The Chair recognizes Mr. Hanna.

MR. W. F. HANNA: Mr. President and fellow delegates, as a member sitting on style and drafting, I became a little perturbed at the freedom with which we were creating bodies or departments or divisions of the government without some responsibility back to the duly elected representatives of the people either in the form of the governor or in the form of the legislature. In searching for some break, I turned to the Alaskan constitution which gave, in section 15, the supreme court power to make and promulgate rules, and then added the language that these rules may be changed by the legislature by a 2/3 vote. I have paraphrased that to provide that the rules may be amended or suspended by the legislature by a 2/3 vote of the members elect of each house. It seems to me that this is a brake that cannot be used merely as a personal vendetta between the legislature and the court, but does give

to the people some power of veto and some small check on the supreme court rulemaking power, and I urge its adoption.

PRESIDENT NISBET: The Chair recognizes Mr. Danhof.

MR. DANHOF: Mr. President, I must respectfully disagree with my colleague from Muskegon. The sentence in section d is, verbatim, what we had in the Constitution of 1908. The only change made is the 2 words "of this" instead of "in the." Section 5 of article VII of the Constitution of 1908 states, "The supreme court shall by general rules establish, modify and amend the practice in such court and in all other courts of record, and simplify the same." This is lifted almost verbatim.

I wish to point out that while this may come from Alaska, that Alaska has an appointive court. It is an appointive procedure. Therefore, there is no responsibility to the people. We have provided for an elective court. I see no particular reason that we should deviate from the practice that has been in this state since 1908. And I think that in view of the fact that our court is responsible to the people, I would urge the rejection of this particular amendment. I see no reason for it. History has not proven that it is needed. I think that it would merely hamstring and would clutter up what is a division of power and what has historically been left to simplify and set forth the rules of practice and procedure that have been historically a court function. The legislature passes the substantive law. The courts provide the rules of precedure. To transcend the 2, I think would be to clutter up this constitution, and need has not been shown. I would urge the rejection of the amendment.

PRESIDENT NISBET: Mr. Habermehl.

MR. HABERMEHL: Mr. President, fellow delegates, I believe that the Hanna amendment is very well thought out indeed. No branch of our government should be left without some sort of check or balance upon it. And when we grant to the supreme court the right to establish, modify, amend and simplify the practice and procedure, we are granting rights that actually can affect the substance of people's legal rights. To require that these be — or at least to give the legislature the right to look over these rules as set up by the supreme court is simply a check upon the power of the court. I think it is in keeping with good governmental practice. I would urge your support and your vote for the amendment.

PRESIDENT NISBET: Judge Leibrand.

MR. LEIBRAND: Mr. President and delegates, I think there is a great deal of sense in what Delegate Hanna and Delegate Habermehl have said. I support the Hanna amendment.

PRESIDENT NISBET: The question is on the amendment offered by Mr. Hanna. Mr. Ford.

MR. FORD: I urge a no vote on this amendment. This is not a check or a balance. This is a device whereby the legislature, at any time it determined, by reason of something pending in one of the courts or if the supreme court itself wanted to, could suspend the rules of the game. Now, this is a lot different than the legislature passing an act for the purpose of creating or modifying substantive law. This would give the legislature the ability to step in in the middle of the ballgame and suspend the rules until they passed legislation or until something else happened.

PRESIDENT NISBET: The question is on the amendment. Those in favor will say aye. Opposed, no.

The amendment is not adopted.

DELEGATES: Division.

PRESIDENT NISBET: A division has been requested. Is the demand seconded? Sufficient number up. Those in favor of the amendment will vote aye. Those opposed, nay. Have you all voted? If so, the secretary will lock the machine and tally the vote.

SECRETARY CHASE: On the adoption of the amendment offered by Mr. Hanna, the yeas are 40; the nays are 80.

PRESIDENT NISBET: The amendment is not adopted. The question now is on Committee Proposal 91, as amended. Will the board be cleared, please. Will the delegates please clear the board. Those in favor of Committee Proposal 91 as amended will vote aye. Those opposed will vote nay. This is a record roll call vote. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—122

Allen	Gust	Powell
Andrus, Miss	Habermehl	Prettie
Anspach	Hanna, W. F.	Pugsley
Balcer	Hannah, J. A.	Radka
Barthwell	Hart, Miss	Rajkovich
Batchelor	Haskill	Richards, J. B.
Beaman	Hatch	Richards, L. W.
Bentley	Hatcher, Mrs.	Romney
Binkowski	Heideman	Rood
Blandford	Higgs	Rush
Bledsoe	Hodges	Sablich
Bonisteel	Hood	Seyferth
Bradley	Howes	Shackleton
Brake	Hoxie	Shaffer
Buback	Hubbs	Shanahan
Butler, Mrs.	Hutchinson	Sharpe
Conklin, Mrs.	Iverson	Sleder
Cudlip	Judd, Mrs.	Snyder
Cushman, Mrs.	Karn	Stafseth
Danhof	Kelsey	Staiger
Dell	Kirk, S.	Stamm
Donnelly, Miss	Knirk, B.	Sterrett
Doty, Dean	Koeze, Mrs.	Stevens
Doty, Donald	Kuhn	Stopczynski
Douglas	Lawrence	Suzore
Downs	Leppien	Thomson
Durst	Lesinski	Tubbs
Elliott, A. G.	Madar	Turner
Elliott, Mrs. Daisy	Martin	Tweedie
Erickson	McGowan, Miss	Upton
Everett	McLogan	Van Dusen
Farnsworth	Millard	Walker
Faxon	Mosier	Wanger
Figy	Murphy	White
Finch	Nisbet	Wilkowski
Follo	Ostrow	Wood
Ford	Page	Woolfenden
Gadola	Perlich	Yeager
Garvin	Perras	Young
Goebel	Plank	Youngblood
Gover	Pollock	

Nays—8

Baginski	Dehnke	Leibrand
Boothby	DeVries	McAllister
Brown, G. E.	Jones	

SECRETARY CHASE: On the passage of Committee Proposal 91, as amended, the yeas are 122; the nays are 8.

PRESIDENT NISBET: **Committee Proposal 91,** as amended, is passed and referred to the committee on style and drafting.

Following is Committee Proposal 91 as amended and rereferred to the committee on style and drafting:

Sec. a. The supreme court shall consist of 8 justices to be elected at nonpartisan elections as provided by law. A vacancy hereafter created as the result of the death, retirement or resignation of one incumbent justice shall not be filled. The term of office shall be for 8 years and not more than 3 terms of office shall expire at the same time. Nominations for justices of the supreme court shall be in the manner as provided by law, except any incumbent justice whose term is to expire may become a candidate for reelection by filing an affidavit of candidacy, in the form and manner prescribed by law, not less than 180 days prior to the expiration of his term.

Sec. b. One justice of the supreme court shall be selected by the court as its chief justice in the manner and for the term provided by the rules of the court. He shall perform other duties required by the court. The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as shall be deemed necessary to aid in the administration of the courts

of this state. The administrator shall perform administrative duties assigned by the court.

Sec. c. The supreme court shall have general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Sec. d. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. e. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. f. The supreme court may appoint, may remove, and shall have general supervision of its staff. It shall have control of the preparation of its budget recommendations and the expenditure of the funds appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff except that the salaries of the justices shall be established by law. All fees and perquisites collected by the court staff shall be turned over to the state treasury and credited to the general fund.

PRESIDENT NISBET (continuing): Mr. Binkowski.

MR. BINKOWSKI: Mr. President, may I ask a question of Mr. Danhof so he can clarify the record regarding a proposal? Mr. Danhof, I believe you and several members of the convention have received letters from a judge of the common pleas court of Detroit with respect to a possible increase of their salaries. We know that the common pleas court in Detroit is a statutory court and no mention was made of it, although the proposed constitution specifically mentions the justices of the supreme court, judges of the court of appeals, circuit court judges, and probate judges. I wonder if, for the record, this can be clarified.

PRESIDENT NISBET: Mr. Danhof.

MR. DANHOF: Mr. Binkowski, in answer to your question, section g of Committee Proposal 96 covers the constitutional courts. If you will recall, during the debate on the miscellaneous section we removed a prohibition against the increase of salary of public officers. Therefore, the common pleas court, the recorders court and municipal court judges who previously were barred because of a general prohibition within the constitution, being statutory courts, there is nothing now to prohibit the legislature from enacting the identical provision for those statutory courts that we have enacted for the constitutional courts. I see no prohibition against allowing for the increase of salaries during the term of the judges of these statutory courts.

PRESIDENT NISBET: Announcements.

SECRETARY CHASE: All delegates are asked to check their mailboxes before they go to lunch.

The committee on style and drafting will meet in room G during the noon recess. Mr. Cudlip, chairman.

The committee on emerging problems will have a short meeting — emphasis "short meeting" — this noon in room H immediately upon taking the recess.

The committee on declaration of rights, suffrage and elections will meet in room F today at 8:00 o'clock p.m.

The committee on legislative powers will meet in room H Thursday at 8:00 o'clock a.m. T. Jefferson Hoxie, chairman.

PRESIDENT NISBET: The Chair recognizes Mr. Bledsoe.

MR. BLEDSOE: Mr. President, I move that the convention recess until 1:30.

PRESIDENT NISBET: The question is on the motion of Mr. Bledsoe. Those in favor will say aye. Opposed, nay.

We are recessed until 1:30 o'clock.

[Whereupon, at 11:40 o'clock a.m., the convention recessed; and, at 1:30 o'clock p.m., reconvened.]

The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

We have the following requests for leave: Mr. William Hanna asks to be excused from the first part of the afternoon session today; and Mr. Garry Brown requests to be excused from this afternoon's session and the sessions of Wednesday, Thursday and Friday, April 25, 26 and 27, due to the trial of a lawsuit previously adjourned to these dates at a time when it appeared that the convention would adjourn by April 15.

PRESIDENT NISBET: Without objection, the requests are granted.

Second reading on executive branch proposals. The secretary will read.

SECRETARY CHASE: Item 1 on the calendar, **Committee Proposal 71** —

MR. MARTIN: Mr. President.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, several delegates have requested a little additional time to prepare some material on this on both sides of the house. I'd like to move at this time that Committee Proposal 71 be placed right after item 10 on our calendar, which will bring it up just a little later.

PRESIDENT NISBET: The question is on the motion of Mr. Martin. Those in favor will say aye. Opposed, no.

The motion prevails. The secretary will read the next proposal.

SECRETARY CHASE: Item 2 on the calendar, **Committee Proposal 2,** A proposal to provide the executive power be vested in the governor. Amends article VI, section 2.

Following is Committee Proposal 2 as reported by the committee on style and drafting and read by the secretary. (For full text as referred to said committee, see above, page 336.):

Sec. a. The executive power is vested in the governor.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: The language of the section has been unchanged by the style and drafting committee, Mr. President, and it is exactly in the form which it was when it left the floor. We have nothing to add to that.

PRESIDENT NISBET: The question is on the adoption of Committee Proposal 2. Any amendments?

SECRETARY CHASE: None.

PRESIDENT NISBET: This is a record roll call vote. Those in favor of approval of Committee Proposal 2 will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—112

Allen	Garvin	Perlich
Anspach	Goebel	Perras
Austin	Gover	Plank
Baginski	Gust	Pollock
Balcer	Habermehl	Powell
Barthwell	Hannah, J. A.	Prettie
Batchelor	Hart, Miss	Pugsley
Beaman	Haskill	Radka
Bentley	Hatch	Rajkovich
Blandford	Heideman	Richards, J. B.
Bonisteel	Higgs	Richards, L. W.
Bradley	Hodges	Romney
Brake	Howes	Rood
Buback	Hubbs	Rush
Butler, Mrs.	Hutchinson	Sablich
Cudlip	Iverson	Shackleton
Cushman, Mrs.	Jones	Sharpe
Danhof	Judd, Mrs.	Sleder
Dehnke	Karn	Snyder
Dell	Kelsey	Spitler
DeVries	Kirk, S.	Stafseth
Donnelly, Miss	Koeze, Mrs.	Staiger
Doty, Dean	Krolikowski	Stamm

PREAMBLE
I. DECLARATION OF RIGHTS
II. ELECTIONS
III. GENERAL GOVERNMENT
IV. LEGISLATIVE BRANCH
V. EXECUTIVE BRANCH
VI. JUDICIAL BRANCH
VII. LOCAL GOVERNMENT
VIII. EDUCATION
IX. FINANCE AND TAXATION
X. PROPERTY
XI. PUBLIC OFFICERS AND EMPLOYMENT
XII. AMENDMENT AND REVISION
SCHEDULE AND TEMPORARY PROVISIONS

PREAMBLE

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I
DECLARATION OF RIGHTS

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4.	Freedom of Worship	15– 3
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Article I
Declaration of Rights

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of race, COLOR, religion, sex or national origin. The legislature shall implement this section by appropriate legislation. This SECTION shall not be construed to [prevent] PROHIBIT reasonable [classification] LEGISLATION for the protection of women.

Sec. 3. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Sec. 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Sec. 5. Every person may freely speak, write, express[,] and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be [passed] ENACTED to restrain or abridge the liberty of speech or of the press.

Sec. 6. Every person has a right to keep and bear arms for the defense of himself and the state.

Sec. 7. The military shall in all cases and at all times be in strict subordination to the civil power.

Sec. 8. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Sec. 9. Neither slavery, nor involuntary servitude unless for the punishment of crime, shall

Explanation—Matter within [ ] is stricken, matter in capitals is new.

ever be tolerated in this state.

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be ENACTED [passed].

Sec. 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding[,] any narcotic drug, [any] firearm, bomb, explosive[,] or any other dangerous weapon, seized by A [any] peace officer outside the curtilage of any dwelling house in this state.

Sec. 12. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

Sec. 13. [Any] A suitor in any court of this state [shall have] HAS the right to prosecute or defend his suit, either in his own proper person or by an attorney.

Sec. 14. The right of trial by jury shall remain, but shall be [deemed to be] waived in all civil cases unless demanded by one of the parties in THE [such] manner [as shall be] prescribed by law. In all civil [actions in circuit courts] CASES TRIED BY 12 JURORS a verdict shall be received when 10 jurors [shall] agree.

Sec. 15. No person shall be subject for the same offense to be twice put in jeopardy. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great.

Sec. 16. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Sec. 17. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Sec. 18. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Sec. 19. In all prosecutions for libels the truth may be given in evidence to the jury; and, if it appears to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted.

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Sec. 21. No person shall be imprisoned for debt arising out of[,] or founded on contract, express or implied, except in cases of fraud or breach of trust.

Sec. 22. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of [2] TWO witnesses to the same overt act[,] or on confession in open court.

Sec. 23. The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE II
ELECTIONS

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2.	Legislature may exclude certain persons from voting	58b
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8.	Recall	58g
9.	Initiative and Referendum	118b

Article II
Elections

Sec. 1. Every citizen of the United States who has attained the age of 21 years, who has resided in this state [6] SIX months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.

Sec. 2. The legislature may by law exclude persons from voting because of mental incompetence[,] or commitment to a jail or penal institution.

Sec. 3. For purposes of voting in the election for president and vice-president of the United States only, the legislature may by law establish lesser residence requirements for citizens who have resided in this state for less than [6] SIX months and may waive residence requirements [of] FOR FORMER citizens of this state who have

removed [t]herefrom. The legislature [may provide the manner of voting by such persons but] shall not permit voting by any [such] person who meets the voting residence requirements of the state to which he has removed.

Sec. 4. The legislature shall enact laws to regulate the time, place [,] and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of [persons who are] candidates for the same office WHO [and] have the same or similar surnames.

Sec. 5. Except for special elections to fill vacancies, OR AS OTHERWISE PROVIDED IN THIS CONSTITUTION, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year[,] or on such other date as MEMBERS OF THE CONGRESS OF THE UNITED STATES ARE REGULARLY ELECTED [may hereafter be provided by the Constitution of the United States or by congress for election of members thereof].

Sec. 6. Whenever any question is REQUIRED TO BE submitted BY A POLITICAL SUBDIVISION to [a vote of] the electors which involves THE INCREASE OF ANY AD VALOREM TAX RATE LIMITATION FOR A PERIOD OF MORE THAN FIVE YEARS, the direct expenditure of public money, OR the issue of bonds, [or the increase of any ad valorem tax rate for a period of more than 5 years,] only [persons having the qualifications of] electors in, and who have property assessed for any ad valorem taxes in, any part of the district or territory to be affected by the result of such election or the lawful husbands or wives of such persons shall be entitled to vote thereon. All ELECTORS IN THE DISTRICT OR TERRITORY AFFECTED [persons having the qualifications of electors] may vote on all other questions. [involving an increase in any ad valorem tax rate and on borrowing by this state.]

Sec. 7. A board of state canvassers [consisting] of [4] FOUR members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Sec. 8. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting [at] IN the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. THE SUFFICIENCY OF any statement of reasons or grounds procedurally required shall be [deemed to pose] a political rather than a judicial question.

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds AND MUST BE INVOKED IN THE MANNER PRESCRIBED BY LAW WITHIN 90 DAYS FOLLOWING THE FINAL ADJOURNMENT OF THE LEGISLATIVE SESSION AT WHICH THE LAW WAS ENACTED. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than [8] EIGHT percent for initiative and [5] FIVE percent for referendum of the total vote cast for all candidates for governor at the last preceding general election AT WHICH A GOVERNOR WAS ELECTED shall be required.

NO LAW AS TO WHICH THE POWER OF REFERENDUM PROPERLY HAS BEEN INVOKED SHALL BE EFFECTIVE THEREAFTER UNLESS APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON AT THE NEXT GENERAL ELECTION.

[The] ANY law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so [petitioned for] PROPOSED is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next [ensuing] general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next [ensuing] general election.

Any [act] LAW submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No [act] LAW

Explanation—Matter within [ ] is stricken, matter in capitals is new.

initiated or adopted by the people shall be subject to the veto power of the governor, and no [act] LAW adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors or [3/4] THREE-FOURTHS of the members elected to and serving in each house of the legislature. [Acts] LAWS adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If [2] TWO or more measures approved by the electors at the same election conflict, THAT [the measure] receiving the highest affirmative vote shall prevail.

The legislature shall implement the provisions of this section.

ARTICLE III
GENERAL GOVERNMENT

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2.	Division of Powers	21a
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5.	Inter-Governmental Agreements	128a
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Article III
General Government

Sec. 1. The seat of government shall be at Lansing.

Sec. 2. The powers of government are divided into [3] THREE branches: legislative, executive[,] and judicial. No person [belonging to] EXERCISING POWERS OF one branch shall exercise powers properly belonging to another branch[,] except [in] AS [cases] expressly provided in this constitution.

Sec. 3. There shall be a great seal of the State of Michigan and its use shall be [prescribed] PROVIDED by law.

Sec. 4. The militia shall be organized, equipped and disciplined as provided by law.

Sec. 5. Subject to provisions of general law, this state or any political subdivision, ANY GOVERNMENTAL AUTHORITY or any combination thereof may enter into agreements[,] for the performance, financing or execution of their respective [governmental] functions, with any one or more of the other states, the United States, the Dominion of Canada, or any political subdivision thereof unless otherwise provided in this constitution.

Any other provision of this constitution [to the contrary] notwithstanding, an officer or employee of the state or OF any [municipal corporation or other subdivision or agency] SUCH UNIT OF GOVERNMENT OR SUBDIVISION OR AGENCY thereof may serve on or with any governmental body ESTABLISHED FOR THE PURPOSES SET FORTH IN THIS SECTION [as a representative of the state or any municipal corporation or other subdivision or agency thereof, or for the purpose of participating or assisting in the consideration or performance of joint or cooperative undertakings or for the study of governmental problems,] and shall not be required to relinquish his office or employment by reason of such service. The legislature [by statute] may impose such restrictions, limitations or conditions on such service as it may deem appropriate.

Sec. 6. The state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements [authorized] PROVIDED by law.

Sec. 7. [All law not repugnant to this constitution,] THE COMMON LAW AND THE STATUTE LAWS NOW IN FORCE, NOT REPUGNANT TO THIS CONSTITUTION, shall remain in force until [changed, repealed or in the case of statutes they have expired because of limitations contained therein] THEY EXPIRE BY THEIR OWN LIMITATIONS, OR ARE CHANGED, AMENDED OR REPEALED.

Sec. 8. Either house of the legislature or the governor may request the opinion of the supreme court [up]on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.

ARTICLE IV
LEGISLATIVE BRANCH

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3.	Representatives, Number, Term, Districts	80b
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19. Legislature, elections, recorded vote . 117a
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22. Bills 35a
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24. Laws, object and title
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26. Bills, requirements for passage
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40. Liquor Control Commission 27a
41. Lotteries 100a
42. Ports and port districts 87a
43. Banking and trust company laws 5a
44. Jury in civil cases 99a
45. Indeterminate sentences 106a
46. Prohibition against death penalty 20a
47. Chaplains 111a
48. Resolution of public disputes 109a
49. Regulation of employment 110a
50. Atomic energy 127a
51. Public Health 126a
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53. Auditor General 78a

Article IV
Legislative Branch

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

Sec. 2. The senate shall consist of 38 members[,] to be elected from single member districts at the same [time] ELECTION as the governor for [4] FOUR-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned an apportionment factor equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest [1/100] ONE-ONE HUNDREDTH of one percent multiplied by [4] FOUR and its percentage of the state's land area computed to the nearest [1/100] ONE-ONE HUNDREDTH of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties [are] IS entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment FACTORS of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there [shall be] IS a failure to comply with the above standards.

(3) Counties entitled to [2] TWO or more senate districts shall be [further sub]divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

Sec. 3. The house of representatives shall consist of 110 members elected for [2] TWO-year terms from single member districts apportioned on a basis of population as [hereinafter] provided IN THIS ARTICLE. The districts shall consist of compact and convenient territory contiguous by land.

Each county which has a population of not less than [7/10] SEVEN-TENTHS of one percent of the population of the state shall constitute a separate representative area. Each county having less than [7/10] SEVEN-TENTHS of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than [7/10] SEVEN-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

TENTHS of one percent of the population of the state. Any county which is isolated under the initial allocation as [herein] provided IN THIS SECTION shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Any county comprising a representative area entitled to [2] TWO or more representatives shall be divided into single member representative districts as follows:

(1) The population of [each] SUCH districtS shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population adhering to county lines.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined upon the effective date of the annexation or merger[,]. THE DISTRICTS WITH WHICH THE TERRITORY SHALL BE COMBINED SHALL BE [as] determined by ordinance of the city certified to the secretary of state.

[No legislator shall be deemed to have vacated his office by virtue of the above section.] NO SUCH CHANGE IN THE BOUNDARIES OF A REPRESENTATIVE OR SENATORIAL DISTRICT SHALL HAVE THE EFFECT OF REMOVING A LEGISLATOR FROM OFFICE DURING HIS TERM.

Sec. 5. ISLAND AREAS ARE CONSIDERED TO BE CONTIGUOUS BY LAND TO THE COUNTY OF WHICH THEY ARE A PART.

Sec. 6. A commission on legislative apportionment is hereby established consisting of [8] EIGHT persons, [4] FOUR of whom shall be selected by the state organizations of each of the [2] TWO political parties whose candidates for governor received the highest vote at the last general election AT WHICH A GOVERNOR WAS ELECTED preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, [4] FOUR of whom shall be selected by the state organization of the third political party. One member of the commission shall be selected by each political party organization from each of the following [4] FOUR regions: (1) The upper peninsula; (2) The northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) Southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) Southeastern Michigan, the remaining counties of the state.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until [2] TWO years after the apportionment [plan] in which they participated becomes effective.

The commission shall be appointed immediately after the adoption of this constitution and whenever [Re]apportionment or districting OF THE LEGISLATURE is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds [necessary] to enable the commission to carry out its activities.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to DISTRICT AND apportion[, and district,] the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of [all of] the members of the commission. The commission shall hold public hearings as may be provided by law.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted BY THE COMMISSION and published as provided in this section.

Upon the application of any [qualified] elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the apportionment commission to perform their duties, may review any final plan adopted by the commission, and shall make orders amending such plan if it fails to comply with the requirements of this constitution.

Sec. 7. Each senator and representative MUST [shall] be a citizen of the United States, at least 21 years of age, and AN [a qualified] elector of the district he represents[,] . [and] The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.

Sec. 8. No person holding any office under the United States or this state or a political subdivision thereof, except notaries public and officers of the armed forces reserve, may be a member of either house of the legislature.

Sec. 9. No person elected TO [a member of] the legislature shall receive any civil appointment within this state from the governor, except notaries public, [from the governor and senate,] from the legislature, or from any other state authority, during the term for which he is elected.

Sec. 10. No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.

Sec. 11. Senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for [5] FIVE days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

Sec. 12. The annual salary of the members of the legislature shall be not less than $9,000[.], AS PROVIDED BY LAW. Members of the legislature shall be entitled to REIMBURSEMENT FOR [2] TWO round trips home EACH [per] month while the legislature is in session, and expenses in connection with the work of interim committees. [No] ChangeS in salary or expenses shall beCOME effective [during the term of office for which the legislature making the change was elected] ONLY WHEN LEGISLATORS COMMENCE THEIR TERM OF OFFICE AFTER A GENERAL ELECTION except and only to the extent of a general salary reduction in all other branches of STATE government.

No person serving in the legislature shall receive at any time for his services as a member of the legislature any additional fees, compensation or financial benefits from the state or its political subdivisions. This section shall not be construed to [deny] AFFECT retirement benefits [to those] OF legislators [eligible to receive] WHICH HAVE [these benefits at] ACCRUED PRIOR TO the [time] EFFECTIVE DATE OF this constitution [becomes effective].

Sec. 13. The legislature shall meet at the seat of government on the second Wednesday in January of each year at [12:00] TWELVE o'clock noon. Each regular session shall adjourn without day, on a day determined by concurrent resolution, at TWELVE [12:00] o'clock noon. Any business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over WITH THE SAME STATUS to the next regular session.

Sec. 14. A majority of the members elected to and serving in each house shall constitute a quorum to do business. A smaller number in each house may adjourn from day to day, and may compel the attendance of absent members in the manner and with penalties as each house may prescribe.

Sec. 15. There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate [adequate] funds for the council's operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall PERIODICALLY [from time to time] examine and recommend to the legislature revision of the various laws of the state.

Sec. 16. Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected thereto and serving therein from discharging a committee

Explanation—Matter within [ ] is stricken, matter in capitals is new.

from the further consideration of any measure. Each house shall BE THE SOLE judge of the qualifications, elections and returns of its members, and may, with the concurrence of TWO-THIRDS [2/3] of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered IN [upon] the journal, with the [yeas and nays] VOTES AND NAMES of the members voting upon the question. No member shall be expelled a second time for the same cause.

Sec. 17. Each house of the legislature may establish the committees necessary for the efficient conduct of its business and the legislature may create joint committees. Each committee shall [keep a recorded] BY roll call vote RECORD THE VOTE AND NAME [by yeas and nays] of all action on bills and resolutions taken in the committee. Such vote shall be available FOR [to] public inspection. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal in advance of the hearing.

Sec. 18. Each house shall keep a journal of its proceedings, and publish the same unless security otherwise requires. The [yeas and nays] RECORD OF THE VOTE AND NAME of the members of either house VOTING on any question shall be entered in the journal at the request of [1/5] ONE-FIFTH of the members present. Any member of either house may dissent from and protest against any act, proceeding or resolution which he deems injurious to any person or the public, and have the reason for his dissent entered in the journal.

Sec. 19. All elections in either house or in joint convention and all votes on appointments [recommended to the senate for confirmation] SUBMITTED TO THE SENATE FOR ADVICE AND CONSENT shall be [taken by yeas and nays and] published BY VOTE AND NAME in the journal.

Sec. 20. The doors of each house shall be open unless the public security otherwise requires.

Sec. 21. Neither house shall, without the consent of the other, adjourn for more than [3] TWO INTERVENING CALENDAR days, nor to any place other than where the legislature may then be in session.

Sec. 22. All legislation [by the legislature] shall be by bill and may originate in either house.

Sec. 23. The style of the laws shall be: The People of the State of Michigan enact.

Sec. 24. No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

Sec. 25. No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

Sec. 26. No bill shall be passed or become a law at any regular session of the legislature until it has been printed or reproduced and in the possession of each house for at least [5] FIVE days. Every bill shall be read THREE [3] times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of [all] the members elected to and serving in each house. On the final passage of [all] bills, the voteS AND NAMES OF THE MEMBERS VOTING THEREON shall be [by yeas and nays and] entered in the journal.

Sec. 27. No act shall take effect [or be in force] until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a [2/3] TWO-THIRDS vote of the members elected to and serving in each house.

Sec. 28. When the legislature is convened on extraordinary occasions in special session no bill shall be passed on any subjects other than those expressly stated in the governor's proclamation or submitted by special message.

Sec. 29. The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by TWO-THIRDS [2/3] of the members elected to and serving in each house [of the legislature] and by a majority of the electors voting thereon in the district [to be] affected. Any act repealing local or special acts [in effect as of the effective date of this constitution] shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

Sec. 30. The assent of TWO-THIRDS [2/3] of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current FISCAL year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the gen-

eral appropriation bills as passed.

Sec. 32. Every law which imposes, continues or revives a tax shall distinctly state the tax.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he does not approve, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If TWO-THIRDS [2/3] of the members elected TO and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by TWO-THIRDS [2/3] of the members elected TO and serving in that house. The vote of each house shall be [determined by the yeas and nays, and the names of the members voting for and against the bill shall be] entered in the journal WITH THE VOTES AND NAMES OF THE MEMBERS VOTING THEREON. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

Sec. 34. Any bill passed by the legislature and approved by the governor, except A BILL appropriatING MONEY [ion bills], may [be referred by the legislature to the qualified electors. No bill so referred shall] PROVIDE THAT IT WILL NOT become [a] law unless approved by a majority of the electors voting thereon.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after final adjournment of the session, and shall be distributed in the manner provided by law. The [speedy] PROMPT publication of judicial decisions shall be provided by law. All laws and judicial decisions shall be free for publication by any person.

Sec. 36. No general revision of the laws shall [hereafter] be made. The legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles.

Sec. 37. The legislature may by concurrent resolution empower a joint committee of the legislature acting [in the interim] between sessions to suspend until the end of the next regular legislative session any rule or regulation [promulgated by] OF an administrative agency PROMULGATED when the legislature is not in regular session.

Sec. 38. The legislature may provide by law the cases in which any office shall be [deemed] vacant and the manner of filling vacancies[,] where no provision is made in this constitution.

Sec. 39. In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state CAUSED by enemy attack on the United States, the legislature MAY [shall have the power to such extent as it deems advisable (1) to] provide by [legislative enactment] LAW for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices[,]; and ENACT [(2) to adopt by legislative enactment such] other [legislation] LAWS [as may be] necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any [elective] vacancies in [any] ELECTIVE officeS temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section.

Sec. 40. The legislature may by law establish a liquor control commission[,] which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. [and] THE LEGISLATURE may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same.

Sec. 41. The legislature shall not authorize any lottery nor permit the sale of lottery tickets.

Sec. 42. The legislature may provide for the incorporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

Sec. 43. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be enacted, amended or repealed except by a vote of [2/3] TWO-THIRDS of the members elected to and serving in each house [of the legislature].

Sec. 44. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.

Sec. 45. The legislature may provide for indeterminate sentences as [a] punishment for crime and for the detention and release of per-

Explanation—Matter within [ ] is stricken, matter in capitals is new.

sons imprisoned or detained [on] UNDER such sentences.

Sec. 46. No law shall be enacted providing for the penalty of death.

Sec. 47. The legislature may authorize the employment of chaplains in state institutions of DETENTION OR confinement.

Sec. 48. The legislature may enact laws providing for the resolution of disputes [in] CONCERNING public [employment] EMPLOYEES, except THOSE IN THE state classified civil service.

Sec. 49. The legislature may enact laws relative to the hours and conditions of employment.

Sec. 50. The legislature may provide safety measures and regulate the use of atomic energy and forms of energy developed in the future, having in view the general welfare of the people of this state.

Sec. 51. The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Sec. 52. The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety[,] and general welfare of the people. The legislature shall provide for the protection of the air, water[,] and other natural resources of the state from pollution, impairment and destruction.

Sec. 53. The legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be [an administrator and] a certified public accountant [duly] licensed to practice in this state, to serve for a term of [8] EIGHT years. He shall be ineligible for appointment or election to any other [paid] public office in this state FROM WHICH COMPENSATION IS DERIVED while serving as auditor general and for [2] TWO years following the termination of his service. He may be removed for cause at any time by a [2/3] TWO-THIRDS vote of the members elected to and serving in each house [of the legislature]. The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general upon direction by the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. He shall be assigned no duties other than those [herein] specified IN THIS SECTION.

Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the [universities and colleges] INSTITUTIONS OF HIGHER EDUCATION to be solely responsible for the control and direction of all expenditures from the institutions' funds.

[The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county accounts by competent state authority and other units of government as provided by law.]

The auditor general, his deputy and one other member of his staff shall be exempt from classified civil service. All other members of his staff shall have classified civil service status.

ARTICLE V

EXECUTIVE BRANCH

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Article V
Executive Branch

Sec. 1. The executive power is vested in the governor.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the EXECUTIVE BRANCH OF state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders AND SUBMITTED TO THE LEGISLATURE. THEREAFTER the legislature shall have 60 CALENDAR days of a regular session, or a full session if of shorter duration, to disapprove [these] EACH executive order[s]. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, [these] EACH order[s] shall become effective at a date thereafter to be designated by the governor.

Sec. 3. The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law. The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive [other than an elective official,] is the head of a principal department, UNLESS ELECTED OR APPOINTED AS OTHERWISE PROVIDED IN THIS CONSTITUTION, he shall be [nominated and,] APPOINTED BY THE GOVERNOR by and with the advice and consent of the senate[, appointed by the governor] and he shall serve at the pleasure of the governor.

When a board or commission is at the head of a principal department, [the members thereof,] unless elected or appointed as otherwise provided in this constitution, THE MEMBERS THEREOF shall be [nominated and,] APPOINTED BY THE GOVERNOR by and with the advice and consent of the senate[, appointed by the governor]. The term of office and procedure for removal of such members shall be as prescribed in this constitution or by law.

Terms of office of any board or commission created or enlarged after [adoption] THE EFFECTIVE DATE of this constitution shall not exceed [4] FOUR years except as otherwise authorized in this constitution. The terms of office of existing boards and commissions[,] which are [greater] LONGER than [4] FOUR years shall not be further extended except as provided in this constitution.

Sec. 4. At no time shall an examining or licensing board of a profession INCLUDE [be composed of] less than a majority of members of that profession. Temporary commissions or agencies for special purposes with a life of no more than [2] TWO years may be established by law and need not be allocated within a principal department.

Sec. 5. Appointment by and with the advice and consent of the senate when used in this constitution or [in statutes] LAWS in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 [legislative] SESSION days after the date of such appointment. [If the] ANY appointment [is] not disapproved within such period [of time the appointment] shall stand confirmed.

Sec. 6. [When the senate is not in session, the governor shall fill a vacancy] VACANCIES in any office, appointment to which requires advice and consent of the senate, [by appointment which may be disapproved by the senate in the manner provided for other] SHALL BE FILLED BY THE GOVERNOR BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. [appointments requiring such advice and consent.] A person [who] WHOSE APPOINTMENT has been disapproved by the senate shall not be eligible for [another] AN interim appointment to the same office.

Sec. 7. Each principal department shall be under the supervision of the governor[,] unless otherwise provided by this constitution. The governor shall take care that the laws be faithfully executed. He shall transact all necessary business with the officers of government and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

The governor may initiate court proceedings in the name of the state to enforce compliance with any constitutional or legislative mandate, or to restrain violations of any constitutional or legislative power, duty[,] or right by any officer, department[,] or agency of the state or any of its political subdivisions. This authority shall not be construed to authorize court proceedings against the legislature.

Sec. 8. Single executives heading principal departments and the chief executive officers of

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principal departments headed by boards or commissions shall keep their offices at the seat of government except as otherwise provided by law, superintend them in person and perform duties prescribed by law.

Sec. 9. The governor shall have power and it shall be his duty[,] to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or FOR any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and report the [causes of] REASONS FOR such removal or suspension to the legislature. [if in session or otherwise at its next session.]

Sec. 10. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an appointed or elected officer, other than a [judicial] LEGISLATIVE OR JUDICIAL officer, until he is REINSTATED [acquitted] or[, if convicted,] until the vacancy is filled in the manner prescribed by law or this constitution [for such office].

Sec. 11. The governor shall be commander-in-chief of the armed forces and may call them out to execute the laws, suppress insurrection and repel invasion.

Sec. 12. The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law.

Sec. 13. The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations [provided] PRESCRIBED by law. He shall inform the legislature annually of each reprieve, commutation and pardon granted, stating reasons therefor.

Sec. 14. The governor may convene the legislature on extraordinary occasions.

Sec. 15. The governor may convene the legislature at some other place when the seat of government becomes dangerous from any cause.

Sec. 16. The governor shall communicate by message to the legislature at the beginning of each session and may at other times present to the legislature information as to the affairs of the state and recommend measures he considers necessary or desirable.

Sec. 17. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit any bills to meet deficiencies in current appropriations.

Sec. 18. The governor [shall have power to] MAY disapprove any distinct item or items APPROPRIATING MONEYS in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto.

Sec. 19. No appropriation shall be [deemed] a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures AUTHORIZED BY [of any bodies receiving] appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures [established] PRESCRIBED by law. The governor['s power to reduce expenditures shall not apply to] MAY NOT REDUCE EXPENDITURES OF the legislative and judicial branches or FROM [to those services for which] funds CONSTITUTIONALLY DEDICATED FOR SPECIFIC PURPOSES. [are mandated by this constitution.]

Sec. 20. The governor, lieutenant governor, secretary of state and attorney general shall be elected FOR FOUR-YEAR TERMS at the general election in each alternate even-numbered year. [They shall serve for terms of 4 years beginning at 12:00 o'clock noon on the first day of January next succeeding their election.]

The lieutenant governor, secretary of state and attorney general shall be nominated by party conventions in a manner prescribed by law. In the general election one vote shall be cast jointly for the candidates for governor and lieutenant governor nominated by the same party.

VACANCIES IN THE OFFICE OF THE SECRETARY OF STATE AND ATTORNEY GENERAL SHALL BE FILLED BY APPOINTMENT BY THE GOVERNOR.

Sec. 21. [No person shall] TO be eligible for the office of governor or lieutenant governor [who shall not have] A PERSON MUST HAVE attained the age of 30 years, and [who shall] have [not] been [4 years next preceding his election] a registered elector in this state FOR FOUR

YEARS NEXT PRECEDING HIS ELECTION.

Sec. 22. The governor, lieutenant governor, secretary of state[, state treasurer] and attorney general shall each receive the compensation [prescribed] PROVIDED by law in full payment for all services performed and expenses incurred during his term of office. Such compensation shall not be changed during the term of office except as otherwise provided in this constitution.

Sec. 23. An executive residence suitably furnished shall be provided at the seat of government for the use of the governor. He shall receive an allowance for its maintenance as provided by law.

Sec. 24. The lieutenant governor shall be president of the senate, but shall have no vote except in case of equal division. He [shall] MAY perform [additional] duties [as] requested of him by the governor[.], BUT NO POWER VESTED IN THE GOVERNOR SHALL BE DELEGATED.

Sec. 25. In case of the conviction of the governor on impeachment, his removal from office, his resignation, or [the] HIS death, [of the governor or governor-elect, the powers and duties of the office shall vest, in the following order of precedence, in the person elected at the last election to the office of] THE lieutenant governor, THE ELECTED secretary of state, THE ELECTED attorney general, and such other persons designated by law[, who] shall IN THAT ORDER be governor [after the commencement of their term] for the [residue] REMAINDER of the governor's term.

IN CASE OF THE DEATH OF THE GOVERNOR-ELECT, THE LIEUTENANT GOVERNOR-ELECT, THE SECRETARY OF STATE-ELECT, THE ATTORNEY GENERAL-ELECT AND SUCH OTHER PERSONS DESIGNATED BY LAW SHALL BECOME GOVERNOR IN THAT ORDER AT THE COMMENCEMENT OF THE GOVERNOR-ELECT'S TERM.

If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability [as determined herein], the powers and duties of the office of governor shall devolve in order of precedence [upon such persons] until the absence or inability giving rise to the DEVOLUTION [devolvement] of powers ceases.

The inability of the governor[, governor-elect] or person[s serving] ACTING as governor shall be determined by a majority of the supreme court on joint request of the president pro tempore of the senate and the speaker of the house of representatives. Such determination shall be final and conclusive. The supreme court shall upon its own initiative determine if and when the inability ceases.

Sec. 26. The legislature shall provide that the salary of any state officer WHILE ACTING AS [performing the duties of] governor [is] SHALL BE equal to that of the governor.

Sec. 27. There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as [shall be prescribed] PROVIDED by law.

The state highway commission shall consist of [4] FOUR members, not more than [2] TWO of whom shall be members of the same political party. They shall be appointed by the governor BY AND with the advice and consent of the senate for [4] FOUR-year terms, no [2] TWO of which shall expire in the same year AS PROVIDED BY LAW.

The state highway commission shall appoint AND MAY REMOVE a state highway director, who shall be a competent highway engineer and administrator. He shall be the PRINCIPAL [chief] executive OFFICER of the state highway department and shall be responsible for executing the policy of the state highway commission.

Sec. 28. There is hereby established a civil rights commission which shall consist of [8] EIGHT persons, not more than [4] FOUR of whom shall be members of the same political party, who shall be appointed by the governor, with the advice and consent of the senate, for [4] FOUR-year terms not more than [2] TWO of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of [race] religion, RACE, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

The commission shall have [the] power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

Explanation—Matter within [ ] is stricken. matter in capitals is new.

ARTICLE VI
JUDICIAL BRANCH

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Article VI
Judicial Branch

Sec. 1. The judicial power of the state is vested exclusively in one court of justice[,] which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and other courts of limited jurisdiction that the legislature may establish by a [2/3] TWO-THIRDS vote of the members ELECTED TO AND SERVING IN [of] each house.

Sec. 2. The supreme court shall consist of [8] SEVEN justices [to be] elected at non-partisan elections as provided by law. [A vacancy hereafter created as the result of the death, retirement or resignation of one incumbent justice shall not be filled.] The term of office shall be [for 8] EIGHT years and not more than [3] TWO terms of office shall expire at the same time. Nominations for justices of the supreme court shall be in the manner [as provided] PRESCRIBED by law[,]. [except] Any incumbent justice whose term is to expire may become a candidate for re-election by filing an affidavit of candidacy, in the form and manner prescribed by law, not less than 180 days prior to the expiration of his term.

Sec. 3. One justice of the supreme court shall be selected by the court as its chief justice AS [in the manner and for the term] provided by [the] rules of the court. He shall perform other duties required by the court. The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as [shall] MAY be [deemed] necessary to aid in the administration of the courts of this state. The administrator shall perform administrative duties assigned by the court.

Sec. 4. The supreme court shall have general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Sec. 5. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. 6. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. 7. The supreme court may appoint, may remove, and shall have general supervision of its staff. It shall have control of the preparation of its budget recommendations and the expenditure of [the funds] MONEYS appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff except that the salaries of the justices shall be established by law. All fees and perquisites collected by the court staff shall be turned over to the state treasury and credited to the general fund.

Sec. 8. The court of appeals shall consist initially of [9] NINE judges who shall be nominated and elected [on a] AT non-partisan ELECTIONS [basis] from districts, and in the manner, prescribed by law. The supreme court may prescribe by rule that the court of appeals may sit in divisions and for the terms of court and the times and places thereof. Each such division shall consist of not fewer than three judges. The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be [altered] CHANGED by law.

Sec. 9. Judges of the court of appeals shall hold office for a TERM [period] of [6] SIX years and until their successors are elected and qualified. The terms of office for the judges in each district shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 10. The jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be [as provided] PRESCRIBED by rules of the supreme court.

Sec. 11. The state shall be divided into judicial circuits along county lines in each of which there shall be elected one or more circuit judges as provided by law. [A] SESSIONS OF THE circuit court shall be held at least [4] FOUR times in each year in every county organized for judicial purposes. Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by rules of the supreme court. The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges shall be changed and circuits shall be created, altered and discontinued on recommendation of the supreme court to reflect changes in judicial activity. No change in the number of judges [n]or alteration or discontinuance of a circuit shall have the effect of removing a judge from office during his term.

Sec. 12. Circuit judges shall be nominated and elected at non-partisan elections in the circuit in which they reside, and shall hold office for a TERM [period] of [6] SIX years and until their successors are elected and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 13. THE circuit court[s] shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions[,] in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

Sec. 14. The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county. The judges of the circuit court[s] may fill [any] A vacancy in an elective office of county clerk or prosecuting attorney within their respective jurisdictions.

Sec. 15. In each county organized for judicial purposes[,] there shall be a probate court. The legislature may [combine one or more counties into] CREATE OR ALTER probate COURT districts OF MORE THAN ONE COUNTY [upon the approval by a majority of the voters of each county voting separately on the question,] IF APPROVED IN EACH AFFECTED COUNTY BY A MAJORITY OF THE ELECTORS VOTING ON THE QUESTION. [or combine] THE LEGISLATURE MAY PROVIDE FOR THE COMBINATION OF the office of probate judge with any judicial office of limited jurisdiction [in any] WITHIN A county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court[s] and of the judges thereof shall be [prescribed] PROVIDED by law. They shall [also] have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.

Sec. 16. ONE OR MORE judges of probate AS PROVIDED BY LAW shall be nominated and elected at non-partisan elections in the counties or the probate districtS in which they reside and shall hold office for [a period] TERMS of [6] SIX years and until their successors are elected and qualified. In counties or districts with more than one judge the terms of office shall be arranged by law to provide that NOT all terms will [not] expire at the same time.

Sec. 17. No judge or justice of any court of this state shall be paid from the fees of his office nor shall the amount of his salary be measured by fees, other moneys received or [by] the amount of judicial activity of his office.

Sec. 18. Salaries of justices of the supreme court, of the judges of the court of appeals, of the circuit judges within a [county or] circuit, and of the probate judges within a county or district, shall be uniform, and may be increased, but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government.

Each of the judges of the circuit court[s] shall receive an annual salary as provided by law. In addition to the salary received from the state, [treasury,] each circuit judge may receive from any county in which he regularly holds court [such] AN additional salary as [may be] determined from time to time by the board of supervisors of the county. In any county where [such] AN additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein.

Sec. 19. The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and [shall] each SHALL have a common seal. [Except as otherwise authorized by this constitution,] Justices and judges of [the] courts of record [of this state shall] MUST be PERSONS WHO ARE licensed to practice law in this state. [and] No person shall be elected or appointed to a judicial office after reaching the age of 70 years.

Sec. 20. Whenever a JUSTICE OR judge removes his domicile beyond the limits of the territory from which he was elected, he shall [be deemed to] have vacated his office.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Sec. 21. Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service [as a judge] and for one year thereafter.

Sec. 22. Any elected judge of [a] THE court of appeals, circuit court or probate court may become a candidate in the primary election for the office of which he is the incumbent by filing an affidavit of candidacy in the form and manner [provided] PRESCRIBED by law.

Sec. 23. A vacancy in the elective office of a judge of any court of record shall be filled at a general or special election AS PROVIDED BY [according to] law. The supreme court may authorize persons who have served as judges and who have retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified. SUCH PERSONS SHALL BE INELIGIBLE FOR ELECTION TO FILL THE VACANCY.

Sec. 24. There shall be printed upon the ballot under the name of each elected incumbent justice or judge[,] who is a candidate for nomination or election to the same office[,] the designation of that office.

Sec. 25. For reasonable cause, which is not sufficient ground for impeachment, the governor shall remove any judge on a concurrent resolution of [2/3] TWO-THIRDS of the members elected to and serving in each house of the legislature. The cause for removal shall be stated at length in [such] THE resolution.

Sec. 26. The offices of circuit court commissioner and justice of the peace shall be abolished at the expiration of [5] FIVE years from the date this constitution becomes effective or may within this period be abolished by law. Their jurisdiction and powers within this period shall be as provided by law. Within [such] THIS [5] FIVE-year period, the legislature shall establish a court or courts of limited jurisdiction with powers and jurisdiction defined by law. The location of such court or courts, and the qualifications, tenure, method of election[,] and salary of the judges of such court or courts, and by what governmental units the JUDGES [same] shall be paid, shall be provided by law, subject to the limitations contained in this Article.

Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law.

Sec. 27. The supreme court, the court of appeals, the circuit court, or any justices or judges thereof, shall not exercise any power of appointment to public office except as [otherwise] provided in this constitution.

Sec. 28. All final decisions, findings, rulings and orders of any administrative officer or [body] AGENCY existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights [,] or licenses, shall be subject to direct review by the courts as [shall be] provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law[,]; and, in cases in which a hearing is required, whether the same are supported by competent, material[,] and substantial evidence on the whole record[:]. [Provided however, that the] Findings of fact [of the] IN workmen's compensation [commission] PROCEEDINGS shall be conclusive in the absence of fraud unless otherwise provided by law.

Sec. 29. Justices of the supreme court, judges of the court of appeals, circuit judges[,] and other judges as provided by law shall be conservators of the peace within their respective jurisdictions.

ARTICLE VII
LOCAL GOVERNMENT

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Article VII
Local Government

Sec. 1. Each organized county shall be a body corporate with powers and immunities [prescribed] PROVIDED by law.

Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict THE [their] powers of CHARTER COUNTIES TO borrow[ing] money and contract[ing] debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to [enact] ADOPT resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of [5] FIVE percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

Sec. 3. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless APPROVED in [pursuance of] THE MANNER PRESCRIBED BY law BY a majority of electors voting [on] THEREON [the question] in each county to be affected. [thereby shall so decide.]

Sec. 4. There shall be elected for [4] FOUR-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be [prescribed] PROVIDED by law. The board of supervisors in any county may COMBINE [unite] the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. 5. The sheriff, county clerk, county treasurer and register of deeds shall hold their principal offices at the county seat.

Sec. 6. The sheriff may be required by law to renew his security [from time to time] PERIODICALLY and in default of giving such security, his office shall be [deemed] vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody. He shall not hold any other office except in [connection with] civil defense.

Sec. 7. A board of supervisors shall be established in each ORGANIZED county consisting of one member from each organized township and such representation from cities as [shall be prescribed] PROVIDED by law.

Sec. 8. [The] Boards of supervisors shall have LEGISLATIVE, ADMINISTRATIVE [such] AND SUCH OTHER powers and duties as provided by law [not inconsistent with this constitution].

Sec. 9. [The] Boards of supervisors shall have exclusive power to fix the compensation of [all] county [officials] OFFICERS not otherwise provided [for] by law.

Sec. 10. [No] A county seat once established shall NOT be removed until the place to which it is proposed to be [re]moved shall be designated by [2/3] TWO-THIRDS of the MEMBERS OF THE board of supervisors [of the county,] and a majority of the electors voting thereon shall have [voted in favor of] APPROVED the proposed location in [a] THE manner prescribed by law.

Sec. 11. No county shall incur any indebtedness which shall increase its total debt beyond 10 percent of its assessed valuation.

Sec. 12. [No] A navigable stream [of this state] shall NOT be bridged or dammed without permission granted by the board of supervisors of the county [under the provisions of] AS PROVIDED BY law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and POLITICAL SUBDIVISIONS [the municipalities] therein.

Sec. 13. Two or more CONTIGUOUS counties may combine into a single county [provided] IF APPROVED IN EACH AFFECTED COUNTY BY a majority of the [voters] ELECTORS voting on the question. [of each county, voting separately, approve such combination and the counties are contiguous.]

Sec. 14. The board of supervisors of each organized county may organize and consolidate townships under restrictions and limitations [prescribed] PROVIDED by law.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Sec. 15. Any county, when authorized by its BOARD OF SUPERVISORS [legislative body] shall have the authority to enter or to intervene in any ACTION [suit] or certificate proceeding involving the services, charges or rates of any privately owned public utility furnishing services or commodities to rate payers within the county.

Sec. 16. The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may [also prescribe] PROVIDE the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed or elected, with powers and duties [as may be prescribed] PROVIDED by law. The ad valorem property tax IMPOSED for road purposes by any county shall not exceed in any year [1/2] ONE-HALF of one percent of the assessed valuation for the preceding year.

Sec. 17. Each organized township shall be a body corporate with powers and immunities [prescribed] PROVIDED by law [and not inconsistent with this constitution].

Sec. 18. IN EACH ORGANIZED TOWNSHIP there shall be elected for [a] termS of not less than [2 years] TWO nor more than [4] FOUR years as [provided] PRESCRIBED by law [in each organized township] a [township] supervisor, a [township] clerk, a [township] treasurer, and[,] not to exceed [4 township] FOUR trustees, whose legislative and administrative powers and duties shall be [prescribed] PROVIDED by law.

Sec. 19. No ORGANIZED township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless the proposition shall FIRST have BEEN APPROVED BY [first received the affirmative vote of] a majority of the electors of such township voting thereon at a regular or special election.

Sec. 20. The legislature shall provide by law for the dissolution of township government whenever all the territory of [a] AN ORGANIZED township is included within the boundaries of a village or villages NOTWITHSTANDING THAT A VILLAGE MAY INCLUDE TERRITORY WITHIN ANOTHER ORGANIZED TOWNSHIP and provide by law for the classification of such village or villages as cities [notwithstanding that a village may include territory within another township].

Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages[;] . [such general laws] SUCH LAWS shall limit their rate of [general] AD VALOREM property taxation for municipal purposes, and restrict [their] THE powers of CITIES AND VILLAGES TO borrow[ing] money and contract[ing] debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt[,] and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to [pass] ADOPT resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall [be deemed to] limit or restrict the general grant of authority conferred by this section.

Sec. 23. Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals[,] and all works which involve the public health or safety.

Sec. 24. Subject to this constitution, any city or village may acquire, own[,] and operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

Any city or village may sell and deliver heat, power[, and] OR light without its corporate limits [to] IN an amount not [to exceed] EXCEEDING 25 percent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; may sell and deliver water and provide sewage disposal services[,] outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines [without] OUTSIDE the municipality within such limits as may be prescribed by law.

Sec. 25. No city or village shall acquire any public utility furnishing light, heat [and] OR power, or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless the proposition shall FIRST have been approved by [3/5] THREE-FIFTHS of the electors voting thereon. No city or village may sell any such public utility unless the proposition shall FIRST have been approved by a majority of the electors voting thereon, or a greater number if the charter shall so provide.

Sec. 26. Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as [authorized] PROVIDED by law, for any public purpose.

Sec. 27. Notwithstanding any other provision

of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. Wherever possible, such additional forms of government or authorities shall be designed to perform multi-purpose functions rather than a single function.

Sec. 28. The legislature by general law shall authorize two or more counties, cities, villages, townships or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government [and with intergovernmental agencies]; lend their credit to one another or any combination thereof as PROVIDED [prescribed] by law in connection with any authorized publicly owned undertaking.

Any other provision of this constitution notwithstanding, an officer or employee of the state or any [of] such unit[s] of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the [above] purposes SET FORTH IN THIS SECTION and shall not be required to relinquish his office or employment by reason of such service.

Sec. 29. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, city, village or township for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, city, village or township; or to transact local business therein without first obtaining a franchise from the city, village or township. Except as otherwise [authorized] PROVIDED in this constitution the right of all counties, cities, villages and townships to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Sec. 30. No franchise or license shall be granted by any city, village or township for a [longer] period LONGER than 30 years.

Sec. 31. The legislature shall not vacate or alter any road, street, alley, or public place under the jurisdiction of any county, township, city or village.

Sec. 32. Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt [said] SUCH budgets only after a public hearing in a manner prescribed by law.

Sec. 33. The provisions of this constitution and law concerning cities, villages, counties and townships shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not [inconsistent with nor] prohibited by this constitution.

ARTICLE VIII
EDUCATION

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Article VIII
Education

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to race, creed, religion, color[,] or national origin.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to [degree granting] institutions of higher education GRANTING BACCALAUREATE DEGREES, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the [chief administrative] PRINCIPAL EXECUTIVE officer of a state department of education which shall

Explanation—Matter within [ ] is stricken, matter in capitals is new.

have powers and duties provided by law.

The state board of education shall consist of [8] EIGHT members[.] WHO [Of the members first elected 2 shall serve for 2 years, 2 for 4 years, 2 for 6 years and 2 for 8 years, and their successors shall be elected for terms of 8 years. Each member] shall be nominated by party conventionS and elected at large FOR TERMS OF EIGHT YEARS as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall [also] be ex-officio a member of the state board of education without the right to vote.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Sec. 4. The legislature shall appropriate MONEYS [funds] to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names [said] SUCH institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institions shall be open to the public.

Sec. 5. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. [These] EACH board[s] shall have [the] general supervision of [their respective] ITS institution[s] and the control and direction of all expenditures from the institution's funds. EACH BOARD [They] shall, as often as necessary, elect a president of the institution under ITS [their respective] supervision, [who] HE shall be the principal executive officer of the institution, [and] be ex-officio a member of the board [but] without the right to vote[,] and preside at meetings of the board. The board[s] of each institution shall consist of [8] EIGHT members who shall hold office for TERMS OF [8] EIGHT years and who shall be elected [according to] AS PROVIDED BY law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as [prescribed] PROVIDED by law.

Sec. 6. Other institutions of higher education established by law having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate. The board shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds. [and] IT shall, as often as necessary, elect a president of the institution under its supervision. [who] HE shall be the principal executive officer of the institution and be ex-officio a member of the board [but] without the right to vote. The board may elect one of ITS MEMBERS [their number], or may designate the president, to preside at board meetings. Each board of control shall consist of [8] EIGHT members who shall hold office for TERMS OF [8] EIGHT years, NOT MORE THAN TWO OF WHICH SHALL EXPIRE IN THE SAME YEAR, and WHO SHALL be appointed by the governor BY AND WITH THE ADVICE AND CONSENT OF THE SENATE. [in the same manner as executive appointments are provided in this constitution.] Vacancies shall be filled in like manner.

Sec. 7. The legislature shall provide by law for the establishment and financial support of public community and junior colleges[,] which shall be supervised and controlled by locally elected boards. The legislature shall provide by law for a state board for public community and junior colleges[,] which shall advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support. The board shall consist of [8] EIGHT members who shall hold office for TERMS OF [8] EIGHT years, NOT MORE THAN TWO OF WHICH SHALL EXPIRE IN THE SAME YEAR, and WHO SHALL be appointed by the state board of education. Vacancies shall be filled in like manner. The superintendent of public instruction shall be ex-officio a member of this board without the right to vote.

Sec. 8. Institutions, programs, and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally, or otherwise seriously handicapped shall always be fostered and supported.

Sec. 9. The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, cities[,] and townships for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

ARTICLE IX
FINANCE & TAXATION

Sec.		Com. Proposal
1.	Tax for State Expenses	50a
2.	No Surrender of Tax Power	54a
3.	Uniform Rule of Taxation	51a
4.	Non Profit Corporation	51a
5.	Assessment, rate of	52a
6.	Limits on Ad Valorem Taxes	56a
7.	No graduated tax	51a
8.	Sales Tax limit	39a
9.	Gasoline and Motor Vehicle Taxes, Use, Exceptions	38a
10.	Sales Taxes, Distribution of	39a
11.	School Aid Fund	39b
12.	Evidence of Indebtedness	23a
13.	Public Bodies, Borrowing of	49a
14.	State Pledge Full Faith and Credit	23b
15.	Additional Borrowing	23b
16.	School Bonds	23d
17.	Payments from Treasury	37b
18.	Prohibition on Credit to Private Concerns	23c
19.	Stock, Interest of State in	37d
20.	State Depositories	37a
21.	Annual Accounting of Public Moneys	37c, 78a
22.	Adjustment of Claims	74a
23.	Financial Records; open and public	37c–1
24.	Pensions, State Obligations	40a

Article IX
Finance and Taxation

Sec. 1. The legislature shall impose taxes sufficient with other resources to pay the expenses of state government.

Sec. 2. The power of taxation shall never be surrendered, suspended[,] or contracted away.

Sec. 3. The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

Sec. 4. Property held by a non-profit corporation, association, or legal entity and used and occupied exclusively for religious, educational, charitable or burial grounds purposes, as defined by law, shall be exempt from real and personal property taxes.

Sec. 5. The legislature shall provide for the assessment by the state of the property of those PUBLIC SERVICE businesses [whose property is now] assessed by the state AT THE DATE THIS CONSTITUTION BECOMES EFFECTIVE, and of other property as designated by the legislature, and for the [levy] IMPOSITION and collection of taxes thereon. Property assessed by the state shall be assessed at the same proportion of its true cash value as the legislature shall specify for property subject to general ad valorem taxation. The rate of taxation on such property shall be the average rate levied upon other property in this state under the general ad valorem tax law, or, if the legislature provides, the rate of tax applicable to the property of each business enterprise assessed by the state shall be the average rate of ad valorem taxation levied upon other property in all counties in which any of such property is situated.

Sec. 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes [levied against] IMPOSED UPON REAL AND TANGIBLE PERSONAL property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of [said] property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and FOR the townships and FOR school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. The limitations established [herein] BY THIS CONSTITUTION or by county vote may be increased to an aggregate of not to exceed 50 mills, OR MORE IF PROVIDED BY LAW, on each dollar of [such] valuation, [except as otherwise provided by law,] for a period of not to exceed 20 years at any one time, [by the vote of] IF APPROVED BY a majority of the [qualified] electors, QUALIFIED UNDER [as defined in] Article II, [hereof] SECTION 6 OF THIS CONSTITUTION[,] VOTING ON THE QUESTION [of any such taxing authority voting thereon].

The foregoing limitations shall not apply to [(a)] taxes [levied] IMPOSED for the payment of principal and interest on bonds or other evidences of indebtedness[,] or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be [levied] IMPOSED without limitation as to rate or amount[,]; or [(b)] TO taxes [levied] IMPOSED for any other purpose by any city, village, charter county, charter township or other charter authority the tax limitations of which are provided by charter or by general law.

Explanation—Matter within [ ] is stricken, matter in capitals is new.

In any school district which extends into [2] TWO or more counties, [there may be levied and collected for school purposes throughout the district] property taxes at the highest rate available in the county which contains the greatest part of the area of the district MAY BE IMPOSED AND COLLECTED FOR SCHOOL PURPOSES THROUGHOUT THE DISTRICT.

Sec. 7. No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions.

Sec. 8. [At no time shall] The legislature SHALL NOT [levy] IMPOSE a sales tax on retailers at a rate of more than [4] FOUR percent of their gross taxable sales of tangible personal property.

Sec. 9. All specific taxes, except general sales and use taxes and regulatory fees, imposed DIRECTLY OR INDIRECTLY on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of [the] necessary collection expenses, be used exclusively for highway purposes as defined by law.

Sec. 10. One-eighth of all taxes [upon the privilege of selling] IMPOSED ON RETAILERS ON TAXABLE SALES AT RETAIL OF tangible personal property [at retail] shall be used exclusively for assistance to cities, villages and townships, on a population basis as provided by law. IN DETERMINING POPULATION the legislature may exclude [from population] any portion of the total number of persons who are wards, patients or convicts [of] IN any tax supported institution.

Sec. 11. There shall be established a state school aid fund. The legislature may [from time to time] dedicate [certain] tax revenues to this fund which shall be used exclusively for the support of public education and [for] school employees' retirement systems, [in a manner] AS provided by law.

Sec. 12. No evidence of state indebtedness shall be issued except for debts authorized pursuant to this constitution.

Sec. 13. Public bodies corporate shall have power to borrow money and to issue their securities evidencing debt, subject to this constitution and law.

Sec. 14. To meet obligations incurred pursuant to appropriations for any fiscal year, the legislature may by law authorize the state to issue its full faith and credit notes in which case it shall pledge undedicated revenues to be received within the same fiscal year for the repayment thereof. Such indebtedness in any fiscal year shall not exceed 15 percent of undedicated revenues received by the state during the preceding fiscal year and such debts shall be repaid at the time the revenues so pledged are received, but not later than the end of the same fiscal year.

Sec. 15. The state may borrow money for specific purposes in amounts as may be provided by acts of the legislature adopted by a vote of [2/3] TWO-THIRDS of the members elected to and serving in each house, and approved by a majority of the electors voting thereon at any general election. The question submitted to the electors shall state the amount to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment.

Sec. 16. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which [it] would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as [last] FINALLY equalized [by the state], or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall LEND [loan] the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and interest on its qualified bonds when due, then the school district shall borrow and the state shall LEND [loan] to it an amount sufficient to enable the school district to make the payment.

The term "qualified bonds" means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued prior to May 4, 1955, or issued thereafter and qualified as provided by law pursuant to Section 27 or Section 28, Article X, of the Constitution of 1908 or pursuant to this section.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used toward the repayment of state loans. In any year when such [a] levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and to limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal

and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made to school districts, shall be without limitation as to rate or amount.

All rights acquired under Sections 27 and 28, Article X of the Constitution of 1908, by holders of bonds heretofore issued, and all obligations assumed by the state or any school district under these sections, shall remain unimpaired.

Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Sec. 18. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.

This section shall not be construed to prohibit the investment of public funds until needed for current requirements [or the investment of public employee retirement system funds], as [may be] provided by law.

Sec. 19. The state shall not subscribe to, nor be interested in the stock of any company, association or corporation[,] . [except that] Funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law[;] . [and except that] Endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees.

Sec. 20. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 percent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

Sec. 21. The legislature shall provide by law for the annual accounting for all public moneys, state and local, and may [also] provide by law for interim accounting.

The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county accounts by competent state authority and other units of government as provided by law.

Sec. 22. PROCEDURES FOR THE EXAMINATION AND ADJUSTMENT OF CLAIMS AGAINST THE STATE SHALL BE PRESCRIBED BY LAW.

Sec. 23. All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be published and distributed annually, as [prescribed] PROVIDED by law.

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be [usable] USED for financing unfunded accrued liabilities.

ARTICLE X
PROPERTY

Sec.		Com. Proposal
1.	Married Women	63a
2.	Eminent Domain	67a
3.	Homestead Exemption	12a
4.	Escheats	74a
5.	State Lands	129a
6.	Alien Rights	43a

Article X
Property

Sec. 1. The real and personal estate of every woman, acquired before marriage, and all property to which she may afterwards become entitled by gift, grant, inheritance or devise, shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be devised or bequeathed by her as if she were unmarried.

Sec. 2. Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law.

Sec. 3. A homestead in the amount of not less than $3,500[.00] and personal property of every resident of this state in the amount of not less than $750[.00], as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded FROM EXEMPTION by law.

Sec. 4. Procedures [for the examination and adjustment of claims against the state and procedures] relating to escheats and to the custody and disposition of escheated property shall be prescribed by law.

Sec. 5. The legislature shall have general supervisory jurisdiction over all state owned lands useful for forest preserves, game areas and recreational purposes; shall require annual reports as to such lands from all departments having supervision or control thereof; and shall by general law provide for the sale, lease[,] or other disposition of such lands.

The legislature BY AN ACT ADOPTED [by a resolution concurred in] by TWO-THIRDS [2/3]

Explanation—Matter within [ ] is stricken, matter in capitals is new.

of the members elected to and serving in each house may [from time to time declare] DESIGNATE any part of such lands AS [to be] a state land reserve. [and may remove lands from such classification.] No lands in the state land reserve may be REMOVED FROM THE RESERVE, sold, leased or otherwise disposed of except by an act of the legislature.

Sec. 6. Aliens who are residents of this state shall enjoy the same rights and privileges in property as citizens of this state.

ARTICLE XI
PUBLIC OFFICERS AND EMPLOYMENT

Sec.		Com. Proposal
1.	Oath of Office	25a
2.	Terms of Office	61a
3.	Extra Compensation	62a
4.	Custodian of Funds, Accounting	55a
5.	Classified Civil Service, creation	22a
6.	Civil Service Commission	22a
7.	Commission to make rules and fix compensation	22a
8.	Increases in Compensation	22a
9.	May abolish positions	22a
10.	Commission to recommend increases to governor and legislature	22a
11.	Commission to receive appropriations	22a
12.	Violations of Civil Service Article	22a
13.	Civil Service, Local Government, county	76a, 81m
14.	Impeachment	42a, 42b, 42c, 42d
15.	Removal of Elected Officers	42e

Article XI
Public Officers and Employment

Sec. 1. [Members of the legislature and] All officers, LEGISLATIVE, executive and judicial, [shall,] before [they enter] ENTERING upon the duties of their respective offices, SHALL take and subscribe the following oath or affirmation: ["]I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability.["] No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.

Sec. 2. The terms of office of elective state officers, members of the legislature[,] and JUSTICES AND judges of courts of record shall begin at [12:00] TWELVE o'clock noon on the first day of January next succeeding their election, except as otherwise provided in this constitution. The terms of office of county officers shall begin on the first day of January next succeeding their election, except as otherwise provided by law.

Sec. 3. Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into.

Sec. 4. No person having custody or control of public moneys shall [have a seat in] BE A MEMBER OF the legislature, [n]or be eligible to any office of trust or profit under this state, until he shall have made an accounting, as provided by law, of all sums for which he may be liable.

Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the [chief] PRINCIPAL executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, [8] EIGHT exempt positions in the office of the governor, and within each principal department, when requested by the department head, [2] TWO other exempt positions, one of which shall be policy-making. The civil service commission may exempt [3] THREE additional positions of a policy-making nature within each principal department.

Sec. 6. The civil service commission shall be non-salaried and shall consist of [4] FOUR persons, not more than [2] TWO of whom shall be members of the same political party, appointed by the governor for TERMS OF [8] EIGHT yearS, [overlapping terms.] NO TWO OF WHICH SHALL EXPIRE IN THE SAME YEAR.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

Sec. 7. The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

No person shall be appointed to or promoted in the classified service who has not been certified BY THE COMMISSION as qualified for such appointment or promotion [by the commission]. No appointments, promotions, demotions or removals in the classified service shall be made for

partisan, racial or religious considerations.

Sec. 8. Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. Within 60 calendar days following such transmission, the legislature may, by a [2/3] TWO-THIRDS vote of the members elected to and serving in each house, reject, reduce, or modify increases in rates of compensation authorized by the commission[:]. [Provided however,] The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year.

Sec. 9. The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition of a position shall have a right of appeal to the commission through established grievance procedures.

Sec. 10. The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

Sec. 11. To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within [6] SIX months after the conclusion of each fiscal year the commission shall return to the state treasury all [funds] MONEYS unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

Sec. 12. No payment for personal services shall be made or authorized until the provisions of this [article] CONSTITUTION PERTAINING TO CIVIL SERVICE have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Sec. 13. BY ORDINANCE OR RESOLUTION WHICH SHALL NOT TAKE EFFECT UNTIL APPROVED BY A MAJORITY OF THE ELECTORS VOTING THEREON, each city, village, township, county, school district[,] and other governmental unit[s] or authorit[ies]Y [performing the same or similar functions] may[, by ordinance or resolution of the governing body which ordinance or resolution shall not take effect until approved by a majority of the electors voting thereon,] establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure. The state civil service commission may on request furnish technical services [to them] TO ANY SUCH UNIT on a reimbursable basis.

[The board of supervisors of any county with a population of 1,000,000 or more shall have the power by ordinance to establish a merit system for county employment. The ordinance or any amendments thereto shall not take effect until approved by a majority of the electors voting thereon.]

Sec. 14. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office or for crimes or misdemeanors, but a majority of the members elected and serving shall be necessary to direct an impeachment.

When an impeachment is directed, the house of representatives shall elect [3] THREE of its members to prosecute the impeachment.

Every impeachment shall be tried by the senate immediately after the final adjournment of the legislature. The senators shall take an oath or affirmation truly and impartially to try and determine the impeachment according to the evidence. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside.

No person shall be convicted without the concurrence of [2/3] TWO-THIRDS of the senators elected and serving. Judgment in case of conviction shall not extend further than removal from office, but the person convicted shall be liable to punishment according to law.

No judicial officer shall exercise ANY OF THE FUNCTIONS OF his office after an impeachment is directed until he is acquitted.

Sec. 15. Any elected officer of a political subdivision may be removed from office in the manner and for the causes [prescribed] PROVIDED by law.

ARTICLE XII
AMENDMENT & REVISION

Sec.		Com. Proposal
1.	By Legislature	64a
2.	By Petition of Electors	65a
3.	Constitutional Convention	66a

Explanation—Matter within [ ] is stricken, matter in capitals is new.

Article XII
Amendment & Revision

Sec. 1. Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by [2/3] TWO-THIRDS of the members elected to and serving in each house on a [yea and nay] vote WITH THE NAMES AND VOTE OF THOSE VOTING entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on [such] a proposed amendment approve [such amendment,] THE SAME, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Sec. 2. Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected, or 300,000 registered electors, whichever is less. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition[,] shall[,] upon its receipt[,] determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next GENERAL election. [at which any state officer is to be elected.] Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot [used in such election] shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, the proposed amendment shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. IF TWO OR MORE AMENDMENTS APPROVED BY THE ELECTORS AT THE SAME ELECTION CONFLICT, THAT AMENDMENT RECEIVING THE HIGHEST AFFIRMATIVE VOTE SHALL PREVAIL.

Sec. 3. At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than [4] FOUR months after the proposal was certified as approved, the electors of each [house of] representative[s] district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate. The delegates so elected shall convene at the SEAT OF GOVERNMENT [capital city] on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. The governor shall appoint a qualified resident of the same district to fill a vacancy in the office of any delegate. [If the legislature shall determine that delegates shall be elected on a partisan basis, the governor shall appoint a qualified resident of the same district and of the same party.] WHO SHALL BE A MEMBER OF THE SAME PARTY AS THE DELEGATE VACATING THE OFFICE IF THE LEGISLATURE PROVIDES FOR PARTISAN ELECTION OF DELEGATES. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, WITH THE NAMES AND VOTE OF THOSE VOTING [the yeas and nays being] entered in the journal. Any proposed constitution or amendments adopted

by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

SCHEDULE AND TEMPORARY PROVISIONS

Sec.		Com. Proposal
1.	Attorney general to recommend necessary laws	44d
2.	Writs, actions, claims, etc. remain effective	44b
3.	Officers continue their duties	44c and 71g
4.	Terms of officers elected November, 1962	68b
5.	Terms of governor, etc. elected 1964. When 4 year terms begin	80 and 71a
6.	Senate Apportionment	80
7.	Supreme Court, reduction to seven justices	91a
8.	Judges of Probate, eligible for re-election	96f
9.	Overlapping terms for judiciary	96j
10.	State Board of Education	47a
11.	Boards of Control	98c
12.	Educational Boards	
13.	Initial allocation	71b
14.	Contractual obligations remain in force	6a
15.	Mackinac Bridge refunding	23b
16.	Constitution submitted to people, when	68a
17.	Constitution submitted to people, manner	68c

TO INSURE THE ORDERLY TRANSITION FROM THE CONSTITUTION OF 1908 TO THIS CONSTITUTION THE FOLLOWING SCHEDULE IS SET FORTH TO BE EFFECTIVE FOR SUCH PERIOD AS ITS PROVISIONS REQUIRE.

Sec. 1. The attorney general [of the state] shall recommend to the legislature AS SOON AS PRACTICABLE [at the commencement of the next session] such changes AS MAY BE NECESSARY [in existing laws as may be deemed necessary] to adapt EXISTING LAWS [the same] to this constitution.

Sec. 2. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights [of individuals, partnerships, bodies corporate, and of this state or any subdivision or agency thereof] existing on the effective date [hereof] OF THIS CONSTITUTION shall continue unaffected except as modified in accordance with the provisions of this constitution.

Sec. 3. Except as otherwise provided in this constitution, all officers filling any office by election or appointment shall continue to exercise THEIR POWERS AND [the] duties [thereof, according to their respective commissions or appointments,] until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

No provision of this constitution, or of law or of executive order authorized by this constitution shall shorten the term of any person elected to state office at a statewide election ON [in] or prior to THE DATE ON WHICH THIS CONSTITUTION IS SUBMITTED TO A VOTE. [November, 1962.] In the event the duties of any [of] such officers shall not have been ABOLISHED OR incorporated into one or more of the principal departments at the expiration of his term, such officer shall continue to serve until his duties are so incorporated OR ABOLISHED.

Sec. 4. All officers elected [on the Tuesday after the first Monday of November, 1962] AT THE SAME ELECTION THAT THIS CONSTITUTION IS SUBMITTED TO THE PEOPLE FOR ADOPTION [under the 1908 Constitution as amended and existing laws] shall take office [on and after the first day of January, 1963,] and complete the term to which they were elected UNDER THE 1908 CONSTITUTION AND EXISTING LAWS AND CONTINUE TO SERVE UNTIL THEIR SUCCESSORS ARE ELECTED AND QUALIFIED PURSUANT TO THIS CONSTITUTION OR LAW.

Sec. 5. Notwithstanding any other provision in this constitution, the governor, THE lieutenant governor, THE secretary of state [and], THE attorney general, AND state senators shall be elected at the general election in 1964 to serve for [2] TWO year terms beginning on the first day of January next succeeding their election. The first [4 year] election OF SUCH OFFICERS FOR FOUR-YEAR TERMS under this constitution shall be held at the general election in 1966.

Sec. 6. The state shall be districted for the purpose of electing senators in accordance with the provisions of [Committee Proposal 80, section a,] ARTICLE IV, SECTION 2 after the official publication of the total population count of the 1970 decennial federal census. Until the [re]apportionment of the senate following the 1970 census, the senatorial districts under the 1908 constitution[, as amended,] shall remain intact except that upon the adoption of this constitution each of the counties of Kent, Genesee, Macomb and Oakland shall be divided by the apportionment commission into [2] TWO senatorial districts and Wayne county into [8] EIGHT senatorial districts in accordance with this constitution.

Sec. 7. [A vacancy hereafter created as the result of the death, retirement or resignation of one incumbent justice shall not be filled.]

NOTWITHSTANDING THE PROVISIONS OF THIS CONSTITUTION THAT THE SUPREME COURT SHALL CONSIST OF SEVEN JUSTICES IT SHALL CONSIST OF EIGHT JUSTICES UNTIL THE TIME THAT A VACANCY OCCURS AS A RESULT OF DEATH, RETIREMENT OR RESIGNATION OF A JUSTICE. THE FIRST SUCH VACANCY SHALL NOT BE FILLED.

Sec. 8. Any [supreme court justice, circuit judge,] judge of probate serving [at] ON the [time this constitution becomes] effective DATE OF THIS CONSTITUTION may serve the remainder of the term and be eligible TO SUCCEED HIMSELF for election [to his present office] regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

Sec. 9. The provisions of [this] Article VI providing that terms of JUDICIAL offices shall not all expire at the same time, shall be implemented BY LAW PROVIDING THAT at the next election for such offices [by legislation providing for elections] JUDGES SHALL BE ELECTED for terms of varying length, none of which shall be shorter than the [basic] REGULAR term provided for the office.

Sec. 10. THE MEMBERS OF THE STATE BOARD OF EDUCATION PROVIDED FOR IN ARTICLE VIII SECTION 3 SHALL FIRST BE ELECTED AT THE FIRST GENERAL ELECTION AFTER THE EFFECTIVE DATE OF THIS CONSTITUTION FOR THE FOLLOWING TERMS: TWO SHALL BE ELECTED FOR TWO YEARS, TWO FOR FOUR YEARS, TWO FOR SIX YEARS, AND TWO FOR EIGHT YEARS AS PRESCRIBED BY LAW.

THE STATE BOARD OF EDUCATION PROVIDED FOR IN THE CONSTITUTION OF 1908 IS ABOLISHED AT TWELVE O'CLOCK NOON JANUARY 1 OF THE YEAR FOLLOWING THE FIRST GENERAL ELECTION UNDER THIS CONSTITUTION AND THE TERMS OF MEMBERS THEREOF SHALL THEN EXPIRE.

Sec. 11. THE PROVISIONS OF THIS CONSTITUTION PROVIDING FOR MEMBERS OF BOARDS OF CONTROL OF INSTITUTIONS OF HIGHER EDUCATION AND THE STATE BOARD OF PUBLIC COMMUNITY AND JUNIOR COLLEGES SHALL BE IMPLEMENTED BY LAW. THE LAW MAY PROVIDE THAT THE TERM OF EACH MEMBER IN OFFICE ON THE DATE OF THE VOTE ON THIS CONSTITUTION MAY BE EXTENDED, AND MAY FURTHER PROVIDE THAT THE INITIAL TERMS OF OFFICE OF MEMBERS MAY BE LESS THAN EIGHT YEARS.

Sec. 12. THE PROVISIONS OF THIS CONSTITUTION INCREASING THE NUMBER OF MEMBERS OF THE BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY AND OF THE BOARD OF GOVERNORS OF WAYNE STATE UNIVERSITY TO EIGHT, AND OF THEIR TERMS OF OFFICE TO EIGHT YEARS, SHALL BE IMPLEMENTED BY LAW. THE LAW MAY PROVIDE THAT THE TERM OF EACH MEMBER IN OFFICE ON THE DATE OF THE VOTE ON THIS CONSTITUTION MAY BE EXTENDED ONE YEAR, AND MAY FURTHER PROVIDE THAT THE INITIAL TERMS OF OFFICE OF THE ADDITIONAL MEMBERS MAY BE LESS THAN EIGHT YEARS.

Sec. 13. The initial allocation of departments by law pursuant to Article V, Section 2 shall be completed within two years after the effective date of this constitution. If such allocation shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make the initial allocation.

Sec. 14. Contractual obligations of the state incurred pursuant to the constitution of 1908 [as amended] shall continue to be obligations of the state.

For the retirement of [such] notes and bonds [as may have been] issued under Section 26 of Article X of the 1908 constitution, there is hereby appropriated from the general fund each year during their life a sum equal to the amount of principal and interest payments due and payable in each [such] year.

Sec. 15. [Provided however, That] The legislature [is authorized to provide by general law adopted] by a vote of [2/3] TWO-THIRDS of the members elected to and serving in each house MAY PROVIDE THAT THE STATE MAY [for the] borrow[ing of] money AND MAY PLEDGE ITS FULL FAITH AND CREDIT for [the] refunding [of] any bonds issued by the Mackinac Bridge Authority[,]AND at [which] THE time OF REFUNDING the Mackinac Bridge Authority [Act] shall be [repealed] ABOLISHED and the operation of the bridge SHALL be assumed by the state highway department. THE LEGISLATURE MAY IMPLEMENT THIS SECTION BY LAW.

Sec. 16. This constitution shall be submitted to the people for their adoption or rejection at the general election to be held on the Tuesday after the first Monday of November, 1962. It shall be the duty of the secretary of state forthwith to give notice of such submission to all other officers required to give or publish any notice in regard to A GENERAL [such] election. He shall give notice that this constitution will be duly submitted to the electors at such election. The notice shall be given in the manner required for the election of governor.

Sec. 17. Every registered elector may vote

on the adoption of the constitution. The board of election commissioners in each county shall cause to be printed on a ballot separate from the ballot containing the names of the nominees for office, the words: ["] Shall the revised constitution be adopted? ( ) Yes. ( ) No. ["] All votes cast at THE [this] election shall be taken, counted, canvassed and returned as provided by law for the election of state officers. [Should] IF the revised constitution so submitted receiveS more votes in its favor than were cast against it, it shall be the supreme law of the state on and after the first day of January OF THE YEAR FOLLOWING ITS ADOPTION [,1963, except as otherwise provided in this constitution].

Explanation—Matter within [ ] is stricken, matter in capitals is new.

appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and shall report the reasons for such removal or suspension to the legislature.

Following is section 28 of article V, as amended and passed:

Sec. 28. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court of the state having jurisdiction provided by law.

Following is explanation of vote submitted by Messrs. Austin, Sablich, Bradley, Wilkowski, Downs, Hodges, Madar, Marshall, Walker, Stopczynski, Young, Faxon, Buback, T. S. Brown, Baginski, Binkowski and Miss Hart:

We voted no on article V, the executive branch, because this builds in the conflict between the governor and the state senate. The executive cannot make a single appointment under this article without the advice and consent of the senate — a senate which does not and can not represent people because of the lack of equitable apportionment. Thus, the governor is restricted and limited and must make decisions on appointments on the basis of confirmability with an actual minority, rather than ability to serve the people of the state.

The present elected highway commissioner has been replaced by a 4 headed bipartisan staggered body, selected with advice and consent, that in turn selects a director. This has neither the advantages of an elected system, nor that of an appointed system directly by the governor. Michigan's present superior highway system can seriously suffer from this unwarranted change.

The state treasurer is no longer elected, but is appointed with advice and consent, and as such will be subject to control in appointment by a majority of the legislators representing a minority of the people of the state. The section dealing on the executive budget (section 19) will practically mandate the governor to reduce expenditures in unearmarked areas if state revenues decline, with the approval of legislative appropriating committees. This too will be a built in conflict between a governor with social responsibilities and a legislative committee that is not truly representative of all the people.

Because highways and local units of government have earmarked funds, whereas schools and social services do not, there will be terrific pressures in a period of economic decline, when tax revenues are least and social needs are the greatest, for the governor to cut expenditures for legislation, mental health, education, and social services to meet requirements of this section.

We, therefore, voted no on this article.

VICE PRESIDENT HUTCHINSON (continuing): The secretary will read article VI, judicial branch.

SECRETARY CHASE: **Article VI,** judicial branch:

[Article VI, sections 1 through 29, was read by the secretary. For the text, see above, page 3060.]

VICE PRESIDENT HUTCHINSON: Article VI has been read a third time.

SECRETARY CHASE: Mr. Cudlip, on behalf of the committee on style and drafting, requests that the following corrections be made in article VI of the proposed revision of the constitution:

section	column	line	Corrections
2	1	57	After "[except" delete "that".
2	1	57	Change "ANY" to "Any".
10	1	3	After "[" insert "as".
18	2	38	After "court" insert "[such]".
18	2	38	At end of line, change "an" to "AN".

VICE PRESIDENT HUTCHINSON: Without objection it is so ordered. [Corrections made above.] The secretary will report the amendments.

SECRETARY CHASE: Mr. W. F. Hanna [and Mr. Higgs] offers the following amendment:

1. Amend article VI, section 26 (first column, line 39) after "jurisdiction" by inserting a comma and "compensation"; so the language will read, "Their jurisdiction, compensation and powers within this period shall be as provided by law."

VICE PRESIDENT HUTCHINSON: Mr. Hanna.

MR. W. F. HANNA: Mr. President and fellow delegates, I want to raise a problem which, unfortunately, I did not catch on first or second reading and it was not until we were going over this matter carefully in style and drafting last week that I saw what I believe to be a serious problem and a serious inconsistency, and I bring it to the attention of the convention. We have provided that upon the adoption of this constitution, or the effective date of this constitution, that no judicial officer shall be compensated by fees or anything based upon the volume of his business, but it is said that he must be paid a salary. We now then come to section 26, where we have continued in office these offices of circuit court commissioner and justice of the peace, which are in fact officers that in the main have been compensated by fees of their office and dependent upon the volume of activity.

Now I want to raise 3 problems with this conflict as I see it: first is the practical impossibility, if this constitution goes into effect on January first of a given year. In the townships the fiscal year is from April 1 to April 1, and in counties the fiscal year will have commenced before the effective date of the constitution. There will be no money appropriated; there will be no money out of which you can pay circuit court commissioners a salary or a justice of the peace a salary. Therefore, you are asking these people to serve completely without compensation. Secondly, under the present state law, each township elects 2 justices of the peace. Certainly, you will have to provide in all due process that the 2 justices will receive the same salary. And in many, many, many townships that have 2 justices, one justice maintains an active calendar and open docket and the other has no open calendar, no docket, and is purely an honorary type of office. To set a salary commensurate for these 2 men that is the same immediately penalizes the man who has been doing the work and benefits the man who does not do the work, and so far there is nothing in this constitution that makes a justice of the peace maintain a docket, hold office, or perform any judicial function. Therefore, until this whole matter can be worked out, this man can sit there and draw a salary and not do anything. So that you have a practical fiscal problem in the efforts to do this.

Now, the second problem that I want to raise is breach of contract. We have elsewhere provided in this constitution that you

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

The roll was called and the delegates voted as follows:

Yeas—57

Allen	Howes	Pugsley
Andrus, Miss	Hoxie	Radka
Anspach	Jones	Richards, J. B.
Austin	Leibrand	Romney
Baginski	Leppien	Rood
Barthwell	Lesinski	Rush
Batchelor	Madar	Sablich
Beaman	Marshall	Seyferth
Bentley	Martin	Sleder
Brake	McAllister	Snyder
Dade	McCauley	Spitler
Dell	McLogan	Stafseth
Downs	Millard	Stopczynski
Elliott, Mrs. Daisy	Mosier	Suzore
Farnsworth	Perlich	Thomson
Faxon	Perras	Walker
Figy	Plank	Wilkowski
Hannah, J. A.	Powell	Woolfenden
Hart, Miss	Prettie	Young

Nays—68

Balcer	Ford	McGowan, Miss
Blandford	Gadola	Nord
Bledsoe	Garvin	Norris
Bonisteel	Goebel	Ostrow
Boothby	Gover	Page
Bradley	Greene	Pellow
Brown, G. E.	Habermehl	Richards, L. W.
Brown, T. S.	Hanna, W. F.	Shackleton
Buback	Haskill	Shaffer
Butler, Mrs.	Hatch	Shanahan
Cudlip	Heideman	Sharpe
Cushman, Mrs.	Hodges	Staiger
Danhof	Iverson	Stevens
Dehnke	Judd, Mrs.	Tubbs
Donnelly, Miss	Karn	Turner
Doty, Dean	Kelsey	Upton
Doty, Donald	King	Van Dusen
Durst	Kirk, S.	Wanger
Elliott, A. G.	Knirk, B.	White
Erickson	Koeze, Mrs.	Wood
Everett	Kuhn	Yeager
Finch	Lawrence	Youngblood
Follo	Mahinske	

SECRETARY CHASE: On the adoption of the amendment offered by Messrs. Allen, Austin and Brake, the yeas are 57; the nays are 68.

VICE PRESIDENT HUTCHINSON: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: We have no others on this section.

VICE PRESIDENT HUTCHINSON: There are no further amendments on the secretary's desk. The question is upon the passage of article VI. Mr. Higgs.

MR. HIGGS: Mr. President and fellow delegates, in supporting this article it is my intention, and I trust the intention of the convention, that the change in the language in section 28 from "workmen's compensation commission" to "workmen's compensation proceedings" was not a matter of substance, not a material change. I make this comment for the record. I believe that the decision of the convention in acting upon the ruling which prevented Delegate Danhof from introducing his amendment to strike this proviso — I interpret this action of the convention as indicating an intention to support the committee on style and drafting in such a way as to determine that there was no change in substance or material change made when style and drafting inserted the word "proceedings" in place of the word "commission." With that construction and intention, I feel I can support this article. If this is not the intention of the convention on the part of other delegates, I would appreciate such delegates so stating.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, have you any speakers other than Mr. Ford seeking recognition?

VICE PRESIDENT HUTCHINSON: Yes, I have one other.

MR. VAN DUSEN: I would move to limit debate on the article to 5 minutes.

VICE PRESIDENT HUTCHINSON: On the motion to limit debate upon the article to 5 minutes, all those in favor will say aye. Opposed, no.

The motion prevails. Debate is limited. The Chair next recognizes Mr. Prettie.

MR. PRETTIE: Mr. President and fellow delegates, I decided to become a candidate for delegate to this convention because I was deeply concerned about the present inconsistent method of electing supreme court justices. When I campaigned I told my constituents that, among other things, I would work to make our courts truly nonpartisan at all levels. I did work hard and long to accomplish this result and many of you worked with me and I appreciate your support, but we failed to get enough votes to accomplish this, not by a vote of 2 to 1 or 3 to 1 but by a very narrow margin. Other equally sincere delegates to this convention, equally concerned with an honest court structure, came to this convention pledged to work for the adoption of the ABA plan for selecting our judges. They had committed themselves to this plan and gave not only of their time but of their substance to present the merits of this plan. They, too, I am sure, are disappointed.

We have a judicial article, unfortunately, that continues the unhappy influence of party politics at the highest echelon of our court structure, and many other batters are not fully satisfied with what we have done here. My personal batting average on my own promises to my constituents is probably not even half of 87.9 per cent, but that is beside the point.

I shall not urge a no vote on this article merely because my views did not prevail. I shall not return to my district and urge voters to reject this document because many of its provisions are not to their liking or to mine. I shall endeavor to explain that this is the product of the democratic process. It is the result of the working together of 144 honest and sincere women and men possessed of integrity and wisdom but also of diverse points of view. Long hours of debate on this floor have forged this document. It is not a result of any clandestine accommodations. I shall point out that our labors of 7½ months are typical of the inefficiency of our form of government but that this slow and tedious process and its sometimes imperfect results are at once the weakness and the strength of the best form of government the mind of man has yet developed.

In spite of personal frustration I shall vote to adopt this article. I urge the scores of delegates who share my views to do the same. I urge those who failed in their efforts to write the ABA plan into the judicial article to put aside their disappointment and vote for it. It is my hope that this greatly improved court structure for this state will be approved not by a vote of 3 to 1 but by a resounding and substantially unanimous vote. (applause)

VICE PRESIDENT HUTCHINSON: Mr. Ford.

MR. FORD: I appreciate Mr. Prettie's point of view. Although I haven't always agreed with him, I have enjoyed working with him on the judiciary committee and it is not easy for me to say what I am going to say now without sounding like I am being a dog in the manger but, believe me, in sincerity, this is not what I am trying to do and I am not trying to impose, at this point, my point of view on anyone else. I am trying to express my own point of view and the reason for voting the way I am going to vote.

As has been said before, by the chairman of our committee on this floor, the judiciary system in Michigan and its present status was not one of the compelling reasons for the calling of this convention. Our present judicial system is superior in all ways. It ranks in the view of people outside of the state amongst the top 3 states in the entire country inasmuch as we have a system that has been completely free from scandal and is as close to efficiency as you are ever going to get in a democratic system of courts.

I cannot support the article as we have now written it because I do not honestly believe that it is an improvement over the 1908 constitution, as amended. If we had truly made the kind of improvements that Mr. Prettie alludes to, I think it would be entirely a different thing. There are 2 or 3 things in the article that are new but they are not constitutional matters to begin with and they do not justify either the time spent by this

convention nor do we face the prospect of losing them if this particular section is not incorporated into the new constitution to replace what we presently have. The outstanding example of that is the appellate —

VICE PRESIDENT HUTCHINSON: Time for debate has expired.

MR. VAN DUSEN: Mr. President, I would move to extend debate for an additional 3 minutes to permit Mr. Ford to complete his remarks.

VICE PRESIDENT HUTCHINSON: Mr. Ford and Mr. Danhof both seek recognition.

MR. VAN DUSEN: I guess we had better make it 5 minutes.

VICE PRESIDENT HUTCHINSON: Mr. Van Dusen moves to extend debate by 5 minutes upon the article. All those in favor will say aye. Opposed, no.

The motion prevails. Mr. Ford may continue.

MR. FORD: The appellate court at first glance seems to be an improvement and everybody in this room, I think, agrees that we should have an appellate court. However, I might remind you that the legislature had already perfected and was ready to bring out of the committee over there an appellate court system and would do the same tomorrow if it were not for the pending action of this convention at the present time. There is nothing in here with regard to the appellate court that is constitutional to the exclusion of all other considerations, and what we have accomplished here could just as well have been done across the street.

The filling of vacancies is something we have talked about and we have passed over. It is something that is of very great importance, and the more I have talked to fellow attorneys and the people back in the area that I represent, the more I am concerned with how serious this particular aspect is and how quickly we have passed over it.

The section that we just finished discussing a few moments ago bears absolutely no resemblance to the language that was originally proposed to the judiciary committee by Mr. Cooper and others who first brought the matter forcibly to our attention, and bears little or no resemblance to the work that was put into it by the judiciary committee.

The local court system has been placed — by reason of the fact that many people, for whatever their reasons, came to this convention with preconceived prejudices in this respect — in a status now where very few people at the local level have any confidence or any prospect of hope as to the continued existence of the autonomy of their local courts as they know them now. I think that the section with respect to local courts places in jeopardy a long standing traditional system in this state.

I think that we have, for all intents and purposes, destroyed the 5 tier system that we started out with in the judiciary committee and, again, this was not the judiciary committee that did it. It was done here on the floor. There is no longer a separate and distinct probate court as a constitutional matter. We now have a 3 court system with a conglomerate of the 2 last tiers that the judiciary committee contemplated. You can now merge all or any part of the functions of these lower courts to the end that all or part of them will be extinguished. We set out to set up a 5 tier court system which, in my opinion, would have been a distinct improvement and the one thing that we could have done by constitution that may have been a great improvement over what the legislature might have done, but we failed in this respect. For that reason I don't feel that I can support the article as it now reads.

VICE PRESIDENT HUTCHINSON: Mr. Danhof.

MR. DANHOF: Mr. President and fellow delegates, I am very happy to endorse the words of Mr. Prettie. We did have on the floor of this particular convention a long and tedious debate on the judicial article. With 58 and now 59 or 60 lawyers, this was probably inevitable. But I think he has pointed out what has been the thinking, at least, of a majority of us. I am sorry to hear the words of my good friend, Bill Ford, who was of great assistance in the committee. I think we have retained an elective system of the judiciary. We have established an intermediate court of appeals. And I point out that it was not really until this constitutional convention got going that we got real action across the street, and this is not in derogation of those gentlemen.

I think we have strengthened the circuit courts, the probate courts. We have made great strides and have provided a system which, I am sure, will last the people of this state for a good 50 or 75 years or whenever we call another convention. We have allowed the legislature greater leeway. This, I think, is an advantage and not a disadvantage. I would hope that we would pass the article. I point out to you that we have had more hours of debate on this than on any other particular article. I urge your support. Thank you.

VICE PRESIDENT HUTCHINSON: Time has expired. The question is upon the passage of article VI on the judicial branch. All those in favor will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—103

Allen	Gust	Pollock
Andrus, Miss	Habermehl	Powell
Anspach	Hanna, W. F.	Prettie
Balcer	Hannah, J. A.	Pugsley
Barthwell	Haskill	Radka
Batchelor	Hatch	Rajkovich
Beaman	Heideman	Richards, J. B.
Bentley	Higgs	Richards, L. W.
Blandford	Howes	Romney
Bledsoe	Hoxie	Rood
Bonisteel	Hubbs	Rush
Boothby	Hutchinson	Seyferth
Bradley	Iverson	Shackleton
Brake	Judd, Mrs.	Shaffer
Brown, G. E.	Karn	Shanahan
Butler, Mrs.	King	Sharpe
Cudlip	Kirk, S.	Sleder
Cushman, Mrs.	Knirk, B.	Spitler
Danhof	Koeze, Mrs.	Stafseth
Dell	Kuhn	Staiger
DeVries	Lawrence	Sterrett
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Suzore
Doty, Donald	Lesinski	Thomson
Durst	Mahinske	Tubbs
Elliott, A. G.	Martin	Turner
Erickson	McCauley	Tweedie
Everett	McGowan, Miss	Upton
Farnsworth	McLogan	Van Dusen
Figy	Millard	Wanger
Finch	Mosier	White
Follo	Page	Wood
Gadola	Perras	Woolfenden
Goebel	Plank	Yeager
Gover		

Nays—33

Austin	Garvin	Nord
Baginski	Greene	Norris
Binkowski	Hart, Miss	Ostrow
Brown, T. S.	Hodges	Pellow
Buback	Jones	Perlich
Dade	Kelsey	Sablich
Dehnke	Krolikowski	Snyder
Downs	Madar	Stopczynski
Elliott, Mrs. Daisy	Marshall	Wilkowski
Faxon	McAllister	Young
Ford	Murphy	Youngblood

SECRETARY CHASE: On the passage of article VI, the judicial branch, the yeas are 103; the nays are 33.

VICE PRESIDENT HUTCHINSON: A majority of the delegates elect having voted in favor thereof, **article VI,** as amended, is passed.

For sections 1 through 7, 9 through 25, 27, 28 and 29 of article VI as passed, see above, page 3060.

Following is section 8 of article VI as amended and passed:

Sec. 8. The court of appeals shall consist initially of nine judges who shall be nominated and elected at non-partisan elections from districts drawn on county lines and as near as possible of equal population, as prescribed by law. The

supreme court may prescribe by rule that the court of appeals may sit in divisions and for the terms of court and the times and places thereof. Each such division shall consist of not fewer than three judges. The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be changed by law.

Following is section 26 of article VI as amended and passed:

Sec. 26. The offices of circuit court commissioner and justice of the peace shall be abolished at the expiration of five years from the date this constitution becomes effective or may within this period be abolished by law. Their jurisdiction, compensation and powers within this period shall be as provided by law. Within this five-year period, the legislature shall establish a court or courts of limited jurisdiction with powers and jurisdiction defined by law. The location of such court or courts, and the qualifications, tenure, method of election and salary of the judges of such court or courts, and by what governmental units the judges shall be paid, shall be provided by law, subject to the limitations contained in this Article.

Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law.

Following is explanation of vote submitted by Mr. McAllister:

My reason for voting no on article VI, the judicial article, is that I believe the provisions of the present constitution are better than the provisions of the new article.

Following is explanation of vote submitted by Messrs. Krolikowski, Binkowski, Garvin, Madar, Ford, Downs and Miss Hart:

We voted no on article VI because Michigan's traditional judicial system has stood the test of time in the basic matter of selection of judges. Michigan's judiciary has a nationwide reputation for ability, integrity and efficiency.

Michigan's judicial system provides that when a vacancy occurs the governor appoints a judge to serve until the next election. At the next election that judge who was temporarily appointed must run against any other candidates nominated by the people, either through petition or by convention, as in the case of the supreme court.

Article VI as adopted removes the governor's right to select the judge on a temporary basis — a system that is proven in practice to have the best of the appointed and the elected systems. The proponents of this change did not prove their need for changing the historically satisfactory method.

Another severe weakness was a constitutional provision in section 28 for appeals from administrative agencies. Present appeals are handled either by general law or specific statute affecting specially created agencies. This proposal has a constitutional, rigid appeal system that could, in effect, make one who wins his case before the administrative tribunal for all intents and purposes go before a court and win his case all over again. This is frustrating, expensive and time-consuming for litigants as well as courts.

We believe that the proposed judicial article does not contain sufficient improvement over the present judicial system to justify replacing the 1908 constitution, as amended. Any improvements found in the article may and should be accomplished by statutory enactment.

We believe that these 2 changes alone are significant steps backward from Michigan's present constitution, and we therefore voted no on article VI — judicial branch.

VICE PRESIDENT HUTCHINSON (continuing): The secretary will read article VII, local government.

SECRETARY CHASE: **Article VII,** local government:

[Article VII, sections 1 through 33, was read by the secretary. For text, see above, page 3063.]

VICE PRESIDENT HUTCHINSON: Article VII has been read a third time.

SECRETARY CHASE: Mr. Cudlip, on behalf of the committee on style and drafting, requests that the following corrections be made in article VII of the proposed revision of the constitution:

section	column	line	Corrections
10	2	29	After "be" remove brackets around "re".
10	2	30	After "to be" insert brackets as follows "[re]".
17	1	27	After "law" insert "[" before "and".
17	1	28	After "constitution" insert "]".
20	1	45	After "provide" insert "by law".
24	2	27	After "own" insert "[,]".
24	2	30	After "disposal" delete "[,]".
30	1	55	After "a" insert "[longer]".
30	1	56	Change "longer" to "LONGER".

VICE PRESIDENT HUTCHINSON: Without objection it is so ordered. [Corrections made above.] The secretary will report an amendment.

SECRETARY CHASE: Messrs. Sharpe and Kuhn offer the following amendment:

1. Amend article VII, section 21 (column 2, line 6) after "law.", by inserting "No governmental subdivision of the state shall impose an income tax unless approved by three-fifths of the qualified electors voting on the question.".

MR. VAN DUSEN: Mr. President.

VICE PRESIDENT HUTCHIINSON: Mr. Van Dusen.

MR. VAN DUSEN: The substance of this amendment has been debated at some length before and I would move at this time to limit debate on this amendment to 10 minutes.

VICE PRESIDENT HUTCHINSON: The question is on the motion to limit debate to 10 minutes. All those in favor will say aye. Opposed will say no.

The motion prevails. Mr. Brown.

MR. G. E. BROWN: Point of order, Mr. President.

VICE PRESIDENT HUTCHINSON: State your point.

MR. G. E. BROWN: The exact language that is presently proposed was offered on second reading except that instead of a majority of the qualified electors, 3/5 has now been added and changed. I think in substance this is the same. When you make the requirement more stringent than failed to pass before, I don't think you have a different matter before you and I would refer you to journal page 999.

VICE PRESIDENT HUTCHINSON: Well, the Chair would be disposed to rule and does rule that this presents a different question. The body has not heretofore considered the matter of a 60 per cent on this thing. Mr. Kuhn.

MR. KUHN: Mr. President and members of the convention, once again we come to you and ask you to consider the question of whether or not a governmental subdivision shall authorize an income tax without a vote of its people. Now it has been argued that this is legislative in nature, and when the Bowman bill passed the legislature you had a pretty strong argument. But since the governor in his wisdom saw fit to veto this bill, I think it now presents the same question that has been raised by many delegates who have things that they felt were necessary to be in this constitution; for example, the civil rights commission, civil service, and things of that nature. We know that those are legislative matters and yet we thought they should be in the constitution, because the legislature did not provide for them. We therefore strongly urge that the delegates to this convention decide this issue for the people and put it in the constitution.

MR. W. F. HANNA: Mr. President.

VICE PRESIDENT HUTCHINSON: Mr. Hanna.

MR. W. F. HANNA: I rise to a point of order. I challenge the germaneness of this proposed amendment to this section. Section 21 of local government is the historical local government article dealing with home rule cities and villages and the reference to tax laws in there are to cities and villages as they may put in their charters for municipal purposes and public purposes.

The amendment says "No governmental subdivison" which would cover school districts, charter or other authorities, town-

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Explanation—Matter within [ ] is stricken, matter in capitals is new.

PREAMBLE

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

Article I

Declaration of Rights

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Sec. 3. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Sec. 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Sec. 5. Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

Sec. 6. Every person has a right to keep and bear arms for the defense of himself and the state.

Sec. 7. The military shall in all cases and at all times be in strict subordination to the civil power.

Sec. 8. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Sec. 9. Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state.

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

Sec. 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

Sec. 12. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

Sec. 13. A suitor in any court of this state has the right to prosecute or defend his suit,

either in his own proper person or by an attorney.

Sec. 14. The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. In all civil cases tried by 12 jurors a verdict shall be received when 10 jurors agree.

Sec. 15. No person shall be subject for the same offense to be twice put in jeopardy. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great.

Sec. 16. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Sec. 17. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Sec. 18. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Sec. 19. In all prosecutions for libels the truth may be given in evidence to the jury; and, if it appears to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted.

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Sec. 21. No person shall be imprisoned for debt arising out of or founded on contract, express or implied, except in cases of fraud or breach of trust.

Sec. 22. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or on confession in open court.

Sec. 23. The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article II
Elections

Sec. 1. Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.

Sec. 2. The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.

Sec. 3. For purposes of voting in the election for president and vice-president of the United States only, the legislature may by law establish lesser residence requirements for citizens who have resided in this state for less than six months and may waive residence requirements for former citizens of this state who have removed herefrom. The legislature shall not permit voting by any person who meets the voting residence requirements of the state to which he has removed.

Sec. 4. The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

Sec. 5. Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected.

Sec. 6. Whenever any question is required to be submitted by a political subdivision to the electors which involves the increase of any ad valorem tax rate limitation for a period of more than five years, or the issue of bonds, only electors in, and who have property assessed for any ad valorem taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon. All electors in the district or territory affected may vote on all other questions.

Sec. 7. A board of state canvassers of four

members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Sec. 8. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors or three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

The legislature shall implement the provisions of this section.

Article III
General Government

Sec. 1. The seat of government shall be at Lansing.

Sec. 2. The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

Sec. 3. There shall be a great seal of the State of Michigan and its use shall be provided by law.

Sec. 4. The militia shall be organized, equipped and disciplined as provided by law.

Sec. 5. Subject to provisions of general law, this state or any political subdivision, any governmental authority or any combination thereof may enter into agreements for the performance, financing or execution of their respective functions, with any one or more of the other states, the United States, the Dominion of Canada, or any political subdivision thereof unless otherwise provided in this constitution. Any other provision of this constitution notwithstanding, an officer or employee of the state or of any such unit of government or subdivision or agency thereof may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service. The legislature may impose such restrictions, limitations or conditions on such service as it may deem appropriate.

Sec. 6. The state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements provided by law.

Sec. 7. The common law and the statute laws now in force, not repugnant to this consti-

tution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.

Sec. 8. Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.

Article IV
Legislative Branch

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned an apportionment factor equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senate districts shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population adhering to county lines.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial dis-

trict in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight persons, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One member of the commission shall be selected by each political party organization from each of the following four regions: (1) The upper peninsula; (2) The northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) Southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) Southeastern Michigan, the remaining counties of the state.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the apportionment commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

Sec. 7. Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents. The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.

Sec. 8. No person holding any office under the United States or this state or a political subdivision thereof, except notaries public and officers of the armed forces reserve, may be a member of either house of the legislature.

Sec. 9. No person elected to the legislature shall receive any civil appointment within this

state from the governor, except notaries public, from the legislature, or from any other state authority, during the term for which he is elected.

Sec. 10. No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.

Sec. 11. Senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

Sec. 12. The compensation and expense allowances of the members of the legislature shall be determined by law. Changes in compensation or expense allowances shall become effective only when legislators commence their terms of office after a general election.

Sec. 13. The legislature shall meet at the seat of government on the second Wednesday in January of each year at twelve o'clock noon. Each regular session shall adjourn without day, on a day determined by concurrent resolution, at twelve o'clock noon. Any business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session.

Sec. 14. A majority of the members elected to and serving in each house shall constitute a quorum to do business. A smaller number in each house may adjourn from day to day, and may compel the attendance of absent members in the manner and with penalties as each house may prescribe.

Sec. 15. There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council's operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state.

Sec. 16. Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected thereto and serving therein from discharging a committee from the further consideration of any measure. Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered in the journal, with the votes and names of the members voting upon the question. No member shall be expelled a second time for the same cause.

Sec. 17. Each house of the legislature may establish the committees necessary for the efficient conduct of its business and the legislature may create joint committees. Each committee shall by roll call vote record the vote and name of all action on bills and resolutions taken in the committee. Such vote shall be available for public inspection. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal in advance of the hearing.

Sec. 18. Each house shall keep a journal of its proceedings, and publish the same unless the public security otherwise requires. The record of the vote and name of the members of either house voting on any question shall be entered in the journal at the request of one-fifth of the members present. Any member of either house may dissent from and protest against any act, proceeding or resolution which he deems injurious to any person or the public, and have the reason for his dissent entered in the journal.

Sec. 19. All elections in either house or in joint convention and all votes on appointments submitted to the senate for advice and consent shall be published by vote and name in the journal.

Sec. 20. The doors of each house shall be open unless the public security otherwise requires.

Sec. 21. Neither house shall, without the consent of the other, adjourn for more than two intervening calendar days, nor to any place other than where the legislature may then be in session.

Sec. 22. All legislation shall be by bill and may originate in either house.

Sec. 23. The style of the laws shall be: The People of the State of Michigan enact.

Sec. 24. No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

Sec. 25. No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

Sec. 26. No bill shall be passed or become a law at any regular session of the legislature until it has been printed or reproduced and in the possession of each house for at least five days. Every bill shall be read three times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of the members elected to and serving in each

house. On the final passage of bills, the votes and names of the members voting thereon shall be entered in the journal.

Sec. 27. No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.

Sec. 28. When the legislature is convened on extraordinary occasions in special session no bill shall be passed on any subjects other than those expressly stated in the governor's proclamation or submitted by special message.

Sec. 29. The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

Sec. 30. The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

Sec. 32. Every law which imposes, continues or revives a tax shall distinctly state the tax.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he does not approve, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

Sec. 34. Any bill passed by the legislature and approved by the governor, except a bill appropriating money, may provide that it will not become law unless approved by a majority of the electors voting thereon.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after final adjournment of the session, and shall be distributed in the manner provided by law. The prompt publication of judicial decisions shall be provided by law. All laws and judicial decisions shall be free for publication by any person.

Sec. 36. No general revision of the laws shall be made. The legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles.

Sec. 37. The legislature may by concurrent resolution empower a joint committee of the legislature acting between sessions to suspend until the end of the next regular legislative session any rule or regulation of an administrative agency promulgated when the legislature is not in regular session.

Sec. 38. The legislature may provide by law the cases in which any office shall be vacant and the manner of filling vacancies where no provision is made in this constitution.

Sec. 39. In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state caused by enemy attack on the United States, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always

be called as soon as possible to fill any vacancies in elective offices temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section.

Sec. 40. The legislature may by law establish a liquor control commission which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. The legislature may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same.

Sec. 41. The legislature shall not authorize any lottery nor permit the sale of lottery tickets.

Sec. 42. The legislature may provide for the incorporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

Sec. 43. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be enacted, amended or repealed except by a vote of two-thirds of the members elected to and serving in each house.

Sec. 44. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.

Sec. 45. The legislature may provide for indeterminate sentences as punishment for crime and for the detention and release of persons imprisoned or detained under such sentences.

Sec. 46. No law shall be enacted providing for the penalty of death.

Sec. 47. The legislature may authorize the employment of chaplains in state institutions of detention or confinement.

Sec. 48. The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service.

Sec. 49. The legislature may enact laws relative to the hours and conditions of employment.

Sec. 50. The legislature may provide safety measures and regulate the use of atomic energy and forms of energy developed in the future, having in view the general welfare of the people of this state.

Sec. 51. The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Sec. 52. The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Sec. 53. The legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be a certified public accountant licensed to practice in this state, to serve for a term of eight years. He shall be ineligible for appointment or election to any other public office in this state from which compensation is derived while serving as auditor general and for two years following the termination of his service. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house. The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general upon direction by the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. He shall be assigned no duties other than those specified in this section.

Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the institutions of higher education to be solely responsible for the control and direction of all expenditures from the institutions' funds.

The auditor general, his deputy and one other member of his staff shall be exempt from classified civil service. All other members of his staff shall have classified civil service status.

Article V
Executive Branch

Sec. 1. The executive power is vested in the governor.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these

changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

Sec. 3. The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law. The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive is the head of a principal department, unless elected or appointed as otherwise provided in this constitution, he shall be appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor.

When a board or commission is at the head of a principal department, unless elected or appointed as otherwise provided in this constitution, the members thereof shall be appointed by the governor by and with the advice and consent of the senate. The term of office and procedure for removal of such members shall be as prescribed in this constitution or by law.

Terms of office of any board or commission created or enlarged after the effective date of this constitution shall not exceed four years except as otherwise authorized in this constitution. The terms of office of existing boards and commissions which are longer than four years shall not be further extended except as provided in this constitution.

Sec. 4. Temporary commissions or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department.

Sec. 5. At no time shall an examining or licensing board of a profession include less than a majority of members of that profession.

Sec. 6. Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

Sec. 7. Vacancies in any office, appointment to which requires advice and consent of the senate, shall be filled by the governor by and with the advice and consent of the senate. A person whose appointment has been disapproved by the senate shall not be eligible for an interim appointment to the same office.

Sec. 8. Each principal department shall be under the supervision of the governor unless otherwise provided by this constitution. The governor shall take care that the laws be faithfully executed. He shall transact all necessary business with the officers of government and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

The governor may initiate court proceedings in the name of the state to enforce compliance with any constitutional or legislative mandate, or to restrain violations of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its political subdivisions. This authority shall not be construed to authorize court proceedings against the legislature.

Sec. 9. Single executives heading principal departments and the chief executive officers of principal departments headed by boards or commissions shall keep their offices at the seat of government except as otherwise provided by law, superintend them in person and perform duties prescribed by law.

Sec. 10. The governor shall have power and it shall be his duty to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and shall report the reasons for such removal or suspension to the legislature.

Sec. 11. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an appointed or elected officer, other than a legislative or judicial officer, until he is reinstated or until the vacancy is filled in the manner prescribed by law or this constitution.

Sec. 12. The governor shall be commander-in-chief of the armed forces and may call them out to execute the laws, suppress insurrection and repel invasion.

Sec. 13. The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law.

Sec. 14. The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations prescribed by law. He shall inform the legislature annually of each reprieve, commutation and pardon granted, stating reasons

therefor.

Sec. 15. The governor may convene the legislature on extraordinary occasions.

Sec. 16. The governor may convene the legislature at some other place when the seat of government becomes dangerous from any cause.

Sec. 17. The governor shall communicate by message to the legislature at the beginning of each session and may at other times present to the legislature information as to the affairs of the state and recommend measures he considers necessary or desirable.

Sec. 18. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit any bills to meet deficiencies in current appropriations.

Sec. 19. The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto.

Sec. 20. No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

Sec. 21. The governor, lieutenant governor, secretary of state and attorney general shall be elected for four-year terms at the general election in each alternate even-numbered year.

The lieutenant governor, secretary of state and attorney general shall be nominated by party conventions in a manner prescribed by law. In the general election one vote shall be cast jointly for the candidates for governor and lieutenant governor nominated by the same party.

Vacancies in the office of the secretary of state and attorney general shall be filled by appointment by the governor.

Sec. 22. To be eligible for the office of governor or lieutenant governor a person must have attained the age of 30 years, and have been a registered elector in this state for four years next preceding his election.

Sec. 23. The governor, lieutenant governor, secretary of state and attorney general shall each receive the compensation provided by law in full payment for all services performed and expenses incurred during his term of office. Such compensation shall not be changed during the term of office except as otherwise provided in this constitution.

Sec. 24. An executive residence suitably furnished shall be provided at the seat of government for the use of the governor. He shall receive an allowance for its maintenance as provided by law.

Sec. 25. The lieutenant governor shall be president of the senate, but shall have no vote except in case of equal division. He may perform duties requested of him by the governor, but no power vested in the governor shall be delegated.

Sec. 26. In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor's term.

In case of the death of the governor-elect, the lieutenant governor-elect, the secretary of state-elect, the attorney general-elect and such other persons designated by law shall become governor in that order at the commencement of the governor-elect's term.

If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases.

The inability of the governor or person acting as governor shall be determined by a majority of the supreme court on joint request of the president pro tempore of the senate and the speaker of the house of representatives. Such determination shall be final and conclusive. The supreme court shall upon its own initiative determine if and when the inability ceases.

Sec. 27. The legislature shall provide that the salary of any state officer while acting as governor shall be equal to that of the governor.

Sec. 28. There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction

and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as provided by law.

The state highway commission shall consist of four members, not more than two of whom shall be members of the same political party. They shall be appointed by the governor by and with the advice and consent of the senate for four-year terms, no two of which shall expire in the same year as provided by law.

The state highway commission shall appoint and may remove a state highway director, who shall be a competent highway engineer and administrator. He shall be the principal executive officer of the state highway department and shall be responsible for executing the policy of the state highway commission.

Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law.

Article VI
Judicial Branch

Sec. 1. The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and other courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Sec. 2. The supreme court shall consist of seven justices elected at non-partisan elections as provided by law. The term of office shall be eight years and not more than two terms of office shall expire at the same time. Nominations for justices of the supreme court shall be in the manner prescribed by law. Any incumbent justice whose term is to expire may become a candidate for re-election by filing an affidavit of candidacy, in the form and manner prescribed by law, not less than 180 days prior to the expiration of his term.

Sec. 3. One justice of the supreme court shall be selected by the court as its chief justice as provided by rules of the court. He shall perform other duties required by the court. The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state. The administrator shall perform administrative duties assigned by the court.

Sec. 4. The supreme court shall have general superintending control over all courts; power to issue, hear, and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Sec. 5. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. 6. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. 7. The supreme court may appoint, may remove, and shall have general supervision of its staff. It shall have control of the preparation of its budget recommendations and the expenditure of moneys appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff except that the salaries of the justices shall be established by law. All fees and perquisites collected by the court staff shall be turned over to the state treasury and credited to the general fund.

Sec. 8. The court of appeals shall consist initially of nine judges who shall be nominated and elected at non-partisan elections from districts drawn on county lines and as nearly as possible of equal population, as provided by law. The

supreme court may prescribe by rule that the court of appeals may sit in divisions and for the terms of court and the times and places thereof. Each such division shall consist of not fewer than three judges. The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be changed by law.

Sec. 9. Judges of the court of appeals shall hold office for a term of six years and until their successors are elected and qualified. The terms of office for the judges in each district shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 10. The jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be prescribed by rules of the supreme court.

Sec. 11. The state shall be divided into judicial circuits along county lines in each of which there shall be elected one or more circuit judges as provided by law. Sessions of the circuit court shall be held at least four times in each year in every county organized for judicial purposes. Each circuit judge shall hold court in the county or counties within the circuit in which he is elected, and in other circuits as may be provided by rules of the supreme court. The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges shall be changed and circuits shall be created, altered and discontinued on recommendation of the supreme court to reflect changes in judicial activity. No change in the number of judges or alteration or discontinuance of a circuit shall have the effect of removing a judge from office during his term.

Sec. 12. Circuit judges shall be nominated and elected at non-partisan elections in the circuit in which they reside, and shall hold office for a term of six years and until their successors are elected and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 13. The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

Sec. 14. The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county. The judges of the circuit court may fill a vacancy in an elective office of county clerk or prosecuting attorney within their respective jurisdictions.

Sec. 15. In each county organized for judicial purposes there shall be a probate court. The legislature may create or alter probate court districts of more than one county if approved in each affected county by a majority of the electors voting on the question. The legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law. They shall have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.

Sec. 16. One or more judges of probate as provided by law shall be nominated and elected at non-partisan elections in the counties or the probate districts in which they reside and shall hold office for terms of six years and until their successors are elected and qualified. In counties or districts with more than one judge the terms of office shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 17. No judge or justice of any court of this state shall be paid from the fees of his office nor shall the amount of his salary be measured by fees, other moneys received or the amount of judicial activity of his office.

Sec. 18. Salaries of justices of the supreme court, of the judges of the court of appeals, of the circuit judges within a circuit, and of the probate judges within a county or district, shall be uniform, and may be increased, but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government.

Each of the judges of the circuit court shall receive an annual salary as provided by law. In addition to the salary received from the state, each circuit judge may receive from any county in which he regularly holds court an additional salary as determined from time to time by the board of supervisors of the county. In any county where an additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein.

Sec. 19. The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and each shall have a common seal. Justices and judges of courts of record must be persons who are licensed to practice law in this state. No person shall be elected or appointed to a judicial office after reaching the age of 70 years.

Sec. 20. Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected, he shall have vacated his office.

Sec. 21. Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter.

Sec. 22. Any elected judge of the court of appeals, circuit court or probate court may become a candidate in the primary election for the office of which he is the incumbent by filing an affidavit of candidacy in the form and manner prescribed by law.

Sec. 23. A vacancy in the elective office of a judge of any court of record shall be filled at a general or special election as provided by law. The supreme court may authorize persons who have served as judges and who have retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified. Such persons shall be ineligible for election to fill the vacancy.

Sec. 24. There shall be printed upon the ballot under the name of each elected incumbent justice or judge who is a candidate for nomination or election to the same office the designation of that office.

Sec. 25. For reasonable cause, which is not sufficient ground for impeachment, the governor shall remove any judge on a concurrent resolution of two-thirds of the members elected to and serving in each house of the legislature. The cause for removal shall be stated at length in the resolution.

Sec. 26. The offices of circuit court commissioner and justice of the peace are abolished at the expiration of five years from the date this constitution becomes effective or may within this period be abolished by law. Their jurisdiction, compensation and powers within this period shall be as provided by law. Within this five-year period, the legislature shall establish a court or courts of limited jurisdiction with powers and jurisdiction defined by law. The location of such court or courts, and the qualifications, tenure, method of election and salary of the judges of such court or courts, and by what governmental units the judges shall be paid, shall be provided by law, subject to the limitations contained in this Article.

Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law.

Sec. 27. The supreme court, the court of appeals, the circuit court, or any justices or judges thereof, shall not exercise any power of appointment to public office except as provided in this constitution.

Sec. 28. All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

Sec. 29. Justices of the supreme court, judges of the court of appeals, circuit judges and other judges as provided by law shall be conservators of the peace within their respective jurisdictions.

Article VII
Local Government

Sec. 1. Each organized county shall be a body corporate with powers and immunities provided by law.

Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

Sec. 3. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless approved in the manner prescribed by law by a majority of electors voting thereon in each county to be affected.

Sec. 4. There shall be elected for four-year terms in each organized county a sheriff, a county

clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law. The board of supervisors in any county may combine the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. 5. The sheriff, county clerk, county treasurer and register of deeds shall hold their principal offices at the county seat.

Sec. 6. The sheriff may be required by law to renew his security periodically and in default of giving such security, his office shall be vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against claims by prisoners for unintentional injuries received while in his custody. He shall not hold any other office except in civil defense.

Sec. 7. A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law.

Sec. 8. Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law.

Sec. 9. Boards of supervisors shall have exclusive power to fix the compensation of county officers not otherwise provided by law.

Sec. 10. A county seat once established shall not be removed until the place to which it is proposed to be moved shall be designated by two-thirds of the members of the board of supervisors and a majority of the electors voting thereon shall have approved the proposed location in the manner prescribed by law.

Sec. 11. No county shall incur any indebtedness which shall increase its total debt beyond 10 percent of its assessed valuation.

Sec. 12. A navigable stream shall not be bridged or dammed without permission granted by the board of supervisors of the county as provided by law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and political subdivisions therein.

Sec. 13. Two or more contiguous counties may combine into a single county if approved in each affected county by a majority of the electors voting on the question.

Sec. 14. The board of supervisors of each organized county may organize and consolidate townships under restrictions and limitations provided by law.

Sec. 15. Any county, when authorized by its board of supervisors shall have the authority to enter or to intervene in any action or certificate proceeding involving the services, charges or rates of any privately owned public utility furnishing services or commodities to rate payers within the county.

Sec. 16. The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may provide the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed or elected, with powers and duties provided by law. The ad valorem property tax imposed for road purposes by any county shall not exceed in any year one-half of one percent of the assessed valuation for the preceding year.

Sec. 17. Each organized township shall be a body corporate with powers and immunities provided by law.

Sec. 18. In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law a supervisor, a clerk, a treasurer, and not to exceed four trustees, whose legislative and administrative powers and duties shall be provided by law.

Sec. 19. No organized township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless the proposition shall first have been approved by a majority of the electors of such township voting thereon at a regular or special election.

Sec. 20. The legislature shall provide by law for the dissolution of township government whenever all the territory of an organized township is included within the boundaries of a village or villages notwithstanding that a village may include territory within another organized township and provide by law for the classification of such village or villages as cities.

Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

Sec. 23. Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

Sec. 24. Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

Any city or village may sell and deliver heat, power or light without its corporate limits in an amount not exceeding 25 percent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; may sell and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines outside the municipality within such limits as may be prescribed by law.

Sec. 25. No city or village shall acquire any public utility furnishing light, heat or power, or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless the proposition shall first have been approved by three-fifths of the electors voting thereon. No city or village may sell any public utility unless the proposition shall first have been approved by a majority of the electors voting thereon, or a greater number if the charter shall so provide.

Sec. 26. Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.

Sec. 27. Notwithstanding any other provision of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. Wherever possible, such additional forms of government or authorities shall be designed to perform multi-purpose functions rather than a single function.

Sec. 28. The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to: enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Any other provision of this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service.

Sec. 29. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Sec. 30. No franchise or license shall be granted by any township, city or village for a period longer than 30 years.

Sec. 31. The legislature shall not vacate or alter any road, street, alley, or public place under the jurisdiction of any county, township, city or village.

Sec. 32. Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law.

Sec. 33. Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law.

Sec. 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Article VIII
Education

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Sec. 4. The legislature shall appropriate moneys to maintain the university of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public.

Sec. 5. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Sec. 6. Other institutions of higher education established by law having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate. The board shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds. It shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution and be ex-officio a member of the board without the right to vote. The board may elect one of its members or may designate the president, to preside at board meetings. Each board of control shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the governor by and with the advice and consent of the senate. Vacancies shall be filled in like manner.

Sec. 7. The legislature shall provide by law for the establishment and financial support of public community and junior colleges which shall be supervised and controlled by locally elected boards. The legislature shall provide by law for a state board for public community and junior colleges which shall advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support. The board shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the state board of education. Vacancies shall be filled in like manner. The superintendent of public instruction shall be ex-officio a member of this board without the right to vote.

Sec. 8. Institutions, programs, and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally, or otherwise seriously handicapped shall always be fostered and supported.

Sec. 9. The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

Article IX
Finance and Taxation

Sec. 1. The legislature shall impose taxes sufficient with other resources to pay the expenses of state government.

Sec. 2. The power of taxation shall never be surrendered, suspended or contracted away.

Sec. 3. The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

Sec. 4. Property owned and occupied by nonprofit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes.

Sec. 5. The legislature shall provide for the assessment by the state of the property of those public service businesses assessed by the state at the date this constitution becomes effective, and of other property as designated by the legislature, and for the imposition and collection of taxes thereon. Property assessed by the state shall be assessed at the same proportion of its true cash value as the legislature shall specify for property subject to general ad valorem taxation. The rate of taxation on such property shall be the average rate levied upon other property in this state under the general ad valorem tax law, or, if the legislature provides, the rate of tax applicable to the property of each business enterprise assessed by the state shall be the average rate of ad valorem taxation levied upon other property in all counties in which any of such property is situated.

Sec. 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

Sec. 7. No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions.

Sec. 8. The legislature shall not impose a sales tax on retailers at a rate of more than four percent of their gross taxable sales of tangible personal property.

Sec. 9. All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for highway purposes as defined by law.

Sec. 10. One-eighth of all taxes imposed on retailers on taxable sales at retail of tangible personal property shall be used exclusively for assistance to townships, cities and villages, on a population basis as provided by law. In determining population the legislature may exclude any portion of the total number of persons who are wards, patients or convicts in any tax supported institution.

Sec. 11. There shall be established a state school aid fund which shall be used exclusively for the support of public education and school

employees' retirement systems, as provided by law. One-half of all taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law.

Sec. 12. No evidence of state indebtedness shall be issued except for debts authorized pursuant to this constitution.

Sec. 13. Public bodies corporate shall have power to borrow money and to issue their securities evidencing debt, subject to this constitution and law.

Sec. 14. To meet obligations incurred pursuant to appropriations for any fiscal year, the legislature may by law authorize the state to issue its full faith and credit notes in which case it shall pledge undedicated revenues to be received within the same fiscal year for the repayment thereof. Such indebtedness in any fiscal year shall not exceed 15 percent of undedicated revenues received by the state during the preceding fiscal year and such debts shall be repaid at the time the revenues so pledged are received, but not later than the end of the same fiscal year.

Sec. 15. The state may borrow money for specific purposes in amounts as may be provided by acts of the legislature adopted by a vote of two-thirds of the members elected to and serving in each house, and approved by a majority of the electors voting thereon at any general election. The question submitted to the electors shall state the amount to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment.

Sec. 16. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as finally equalized, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall lend the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and interest on its qualified bonds when due, then the school district shall borrow and the state shall lend to it an amount sufficient to enable the school district to make the payment.

The term "qualified bonds" means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued prior to May 4, 1955, or issued thereafter and qualified as provided by law pursuant to Section 27 or Section 28 of Article X of the Constitution of 1908 or pursuant to this section.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used toward the repayment of state loans. In any year when such levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and to limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made to school districts, shall be without limitation as to rate or amount.

All rights acquired under Sections 27 and 28 of Article X of the Constitution of 1908, by holders of bonds heretofore issued, and all obligations assumed by the state or any school district under these sections, shall remain unimpaired.

Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Sec. 18. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.

This section shall not be construed to prohibit the investment of public funds until needed for current requirements or the investment of funds accumulated to provide retirement or pension benefits for public officials and employees, as provided by law.

Sec. 19. The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees.

Sec. 20. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money

shall be deposited in any bank in excess of 50 percent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

Sec. 21. The legislature shall provide by law for the annual accounting for all public moneys, state and local, and may provide by law for interim accounting.

The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county accounts by competent state authority and other units of government as provided by law.

Sec. 22. Procedures for the examination and adjustment of claims against the state shall be prescribed by law.

Sec. 23. All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be published and distributed annually, as provided by law.

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

Article X
Property

Sec. 1. The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were unmarried. Dower may be relinquished or conveyed as provided by law.

Sec. 2. Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. The amount of compensation shall be determined in proceedings in a court of record.

Sec. 3. A homestead in the amount of not less than $3,500 and personal property of every resident of this state in the amount of not less than $750, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded from exemption by law.

Sec. 4. Procedures relating to escheats and to the custody and disposition of escheated property shall be prescribed by law.

Sec. 5. The legislature shall have general supervisory jurisdiction over all state owned lands useful for forest preserves, game areas and recreational purposes; shall require annual reports as to such lands from all departments having supervision or control thereof; and shall by general law provide for the sale, lease or other disposition of such lands.

The legislature by an act adopted by two-thirds of the members elected to and serving in each house may designate any part of such lands as a state land reserve. No lands in the state land reserve may be removed from the reserve, sold, leased or otherwise disposed of except by an act of the legislature.

Sec. 6. Aliens who are residents of this state shall enjoy the same rights and privileges in property as citizens of this state.

Article XI
Public Officers and Employment

Sec. 1. All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.

Sec. 2. The terms of office of elective state officers, members of the legislature and justices and judges of courts of record shall begin at twelve o'clock noon on the first day of January next succeeding their election, except as otherwise provided in this constitution. The terms of office of county officers shall begin on the first day of January next succeeding their election, except as otherwise provided by law.

Sec. 3. Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into.

Sec. 4. No person having custody or control of public moneys shall be a member of the legislature, or be eligible to any office of trust or profit under this state, until he shall have made an accounting, as provided by law, of all sums for which he may be liable.

Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legis-

lature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursments for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all moneys unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Sec. 6. By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon, unless otherwise provided by charter, each county, township, city, village, school district and other governmental unit or authority may establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure. The state civil service commission may on request furnish technical services to any such unit on a reimbursable basis.

Sec. 7. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office or for crimes or misdemeanors, but a majority of the members elected and serving shall be necessary to direct an impeachment.

When an impeachment is directed, the house of representatives shall elect three of its members to prosecute the impeachment.

Every impeachment shall be tried by the senate immediately after the final adjournment of the legislature. The senators shall take an oath or affirmation truly and impartially to try and determine the impeachment according to the evi-

dence. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected and serving. Judgment in case of conviction shall not extend further than removal from office, but the person convicted shall be liable to punishment according to law.

No judicial officer shall exercise any of the functions of his office after an impeachment is directed until he is acquitted.

Article XII
Amendment & Revision

Sec. 1. Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Sec. 2. Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Sec. 3. At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. The governor shall appoint a qualified resident of the same district to fill a vacancy in the office of any delegate who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the

journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

Schedule and Temporary Provisions

To insure the orderly transition from the constitution of 1908 to this constitution the following schedule and temporary provisions are set forth to be effective for such period as are thereby required.

Sec. 1. The attorney general shall recommend to the legislature as soon as practicable such changes as may be necessary to adapt existing laws to this constitution.

Sec. 2. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with the provisions of this constitution.

Sec. 3. Except as otherwise provided in this constitution, all officers filling any office by election or appointment shall continue to exercise their powers and duties until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

No provision of this constitution, or of law or of executive order authorized by this constitution shall shorten the term of any person elected to state office at a statewide election on or prior to the date on which this constitution is submitted to a vote. In the event the duties of any such officers shall not have been abolished or incorporated into one or more of the principal departments at the expiration of his term, such officer shall continue to serve until his duties are so incorporated or abolished.

Sec. 4. All officers elected at the same election that this constitution is submitted to the people for adoption shall take office and complete the term to which they were elected under the 1908 constitution and existing laws and continue to serve until their successors are elected and qualified pursuant to this constitution or law.

Sec. 5. Notwithstanding any other provision in this constitution, the governor, the lieutenant governor, the secretary of state, the attorney general, and state senators shall be elected at the general election in 1964 to serve for two year terms beginning on the first day of January next succeeding their election. The first election of such officers for four-year terms under this constitution shall be held at the general election in 1966.

Sec. 6. The state shall be districted for the purpose of electing senators in accordance with the provisions of Section 2 of Article IV of this constitution, after the official publication of the total population count of the 1970 decennial federal census. Until the apportionment of the senate following the 1970 census, the senatorial districts under the 1908 constitution shall remain intact except that upon the adoption of this constitution each of the counties of Kent, Genesee, Macomb and Oakland shall be divide by the apportionment commission into two senatorial districts and Wayne county into eight senatorial districts in accordance with this constitution. The legislature may give prior effect to Section 2 of Article IV of this constitution, which action shall not be subject to veto by the governor.

Sec. 7. Notwithstanding the provisions of this constitution that the supreme court shall consist of seven justices it shall consist of eight justices until the time that a vacancy occurs as a result of death, retirement or resignation of a justice. The first such vacancy shall not be filled.

Sec. 8. Any judge of probate serving on the effective date of this constitution may serve the remainder of the term and be eligible to succeed himself for election regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

Sec. 9. The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office.

Sec. 10. The members of the state board of education provided for in Section 3 of Article VIII of this constitution shall first be elected at the first general election after the effective date of this constitution for the following terms: two shall be elected for two years, two for four years, two for six years, and two for eight years as prescribed by law.

The State Board of Education provided for in the constitution of 1908 is abolished at twelve o'clock noon January 1 of the year following the first general election under this constitution and the terms of members thereof shall then expire.

Sec. 11. The provisions of this constitution providing for members of boards of control of institutions of higher education and the State Board of Public Community and Junior Colleges shall be implemented by law. The law may provide that the term of each member in office on the date of the vote on this constitution may be

extended, and may further provide that the initial terms of office of members may be less than eight years.

Sec. 12. The provisions of this constitution increasing the number of members of the Board of Trustees of Michigan State University and of the Board of Governors of Wayne State University to eight, and of their term of office to eight years, shall be implemented by law. The law may provide that the term of each member in office on the date of the vote on this constitution may be extended one year, and may further provide that the initial terms of office of the additional members may be less than eight years.

Sec. 13. The initial allocation of departments by law pursuant to Section 2 of Article V of this constitution, shall be completed within two years after the effective date of this constitution. If such allocation shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make the initial allocation.

Sec. 14. Contractual obligations of the state incurred pursuant to the constitution of 1908 shall continue to be obligations of the state.

For the retirement of notes and bonds issued under Section 26 of Article X of the 1908 constitution, there is hereby appropriated from the general fund each year during their life a sum equal to the amount of principal and interest payments due and payable in each year.

Sec. 15. The legislature by a vote of two-thirds of the members elected to and serving in each house may provide that the state may borrow money and may pledge its full faith and credit for refunding any bonds issued by the Mackinac Bridge Authority and at the time of refunding the Mackinac Bridge Authority shall be abolished and the operation of the bridge shall be assumed by the state highway department. The legislature may implement this section by law.

Sec. 16. This constitution shall be submitted to the people for their adoption or rejection at the general election to be held on the Tuesday after the first Monday of November, 1962. It shall be the duty of the secretary of state forthwith to give notice of such submission to all other officers required to give or publish any notice in regard to a general election. He shall give notice that this constitution will be duly submitted to the electors at such election. The notice shall be given in the manner required for the election of governor.

Sec. 17. Every registered elector may vote on the adoption of the constitution. The board of election commissioners in each county shall cause to be printed on a ballot separate from the ballot containing the names of the nominees for office, the words: Shall the revised constitution be adopted? ( ) Yes. ( ) No. All votes cast at the election shall be taken, counted, canvassed and returned as provided by law for the election of state officers. If the revised constitution so submitted receives more votes in its favor than were cast against it, it shall be the supreme law of the state on and after the first day of January of the year following its adoption.

consideration of the deletion of section 6 of the schedule in its entirety.

I think because of the length of the roll calls, which we have to conduct by voice today, it might make sense to determine whether there is going to be a section 6 of the schedule before putting the secretary to the work of calling the roll on an amendment thereto. I would therefore move that item 8 on the order of business be taken up now so that we can dispose of that question before considering further the possible amendment to section 6.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that item 8 on the order of business, **consideration of deletion of section 6 of schedule,** be advanced on the calendar. Those in favor will say aye. Opposed, no.

The motion prevails. The Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, now I move that the rules be suspended for the sole purpose of considering an amendment to the schedule to delete section 6 and renumber the remaining sections.

PRESIDENT NISBET: The question is on the suspension of the rules. Those in favor will say aye. Opposed, no.

The motion prevails, 2/3 of the delegates having voted therefor. The rules are suspended. Mr. Van Dusen.

MR. VAN DUSEN: I yield to Dr. John Hannah.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. President, I move that the temporary provisions of the schedule of the proposed constitution be amended by striking out all of section 6 and renumbering the remaining sections.

PRESIDENT NISBET: The question is on the motion of Dr. Hannah which the secretary will read again.

SECRETARY CHASE: Mr. J. A. Hannah offers the following amendment:

1. Amend the schedule, section 6 (column 2) line 5, by striking out all of section 6 which reads as follows:

> Sec. 6. The state shall be districted for the purpose of electing senators in accordance with the provisions of Section 2 of Article IV of this constitution, after the official publication of the total population count of the 1970 decennial federal census. Until the apportionment of the senate following the 1970 census, the senatorial districts under the 1908 constitution shall remain intact except that upon the adoption of this constitution each of the counties of Kent, Genesee, Macomb and Oakland shall be divided by the apportionment commission into two senatorial districts and Wayne county into eight senatorial districts in accordance with this constitution. The legislature may give prior effect to Section 2 of Article IV of this constitution, which action shall not be subject to veto by the governor.

and renumbering the balance of the sections.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, I wonder if I could ask Delegate Hannah the intent of his amendment and what the effect will be on the document in its submission.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. President and delegates, the effect of this amendment, if it is adopted, will be that in the event the proposed constitution is approved by the voters of this state, the apportionment of the senate will be immediately effective in the same way as the reapportionment of the house. It will mean that if this section 6 is taken out of the schedule and the constitution is adopted, immediately the apportionment commission will be set up and they will proceed to draw new districts both for the senate and the house, with the senate, of course, following the formula that is included as a part of the constitution.

PRESIDENT NISBET: Mr. Downs.

MR. DOWNS: Mr. President, we're being put in a very strange and illogical position. The provision for the proposed senate has, by the attorney general, been declared unconstitutional. The only question is the timing. As I understand it, to vote for this deletion would simply mean that an unconstitutional provision would be made effective sooner; to vote against it simply means that the 1952 amendment which is now unconstitutional, pending review by the United States supreme court, would not be law and what we would have is the 1908 constitution which the Michigan state supreme court has said is the law. I am therefore—and I want the logic of this made very clear—voting against deleting this section, not because I want this section to go into effect later, but because I believe this section and what it applies to are both unconstitutional. We now have the law of the state of Michigan, the 1908 constitution, which has a senate based on population. I am voting no on this question for the reason that I am voting for the 1908 constitution without the 1952 amendment, which has been declared by the Michigan supreme court to be the law of this state.

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: I rise to support this amendment for the deletion. It seems to me that it's become evident to most of us by this time that the final body that will decide the question of its constitutionality is not in the state of Michigan but is the United States supreme court; and for that reason I am unwilling to surrender any possibility of achieving what I consider to be a fairer and more equitable reapportionment provision for the state of Michigan. If this new constitution is adopted—which I feel confident it will be—the deletion of this would give us several more senators in Wayne county immediately. We would end up with 10 state senators and it would give people of Oakland county, who are very under represented, 3 senators. The other counties would also have fairer representation under this provision, provided we delete this section 6.

It seems to me that those of us who are from the metropolitan area are put in the very peculiar position indeed if we vote to keep section 6 and find that this constitution is adopted and that we thereby have taken away from us several senators to which we would otherwise become entitled. For this reason I rise to support the amendment to delete section 6.

PRESIDENT NISBET: Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, may I state in response to Mr. Downs' remarks that I'm a little tired of having the attorney general of this state make pronouncements about what is constitutional and what is not.

I think any lawyer who gives careful review to the opinions of the Michigan supreme court rendered 2 weeks ago in Scholle vs. Hare, and to the opinions of the justices of the United States supreme court in Baker vs. Carr, and to the remarks of Mr. Justice Potter Stewart last Friday, would recognize that the formula for senate apportionment which we provide in the new constitution meets every standard yet announced by the United States supreme court for validity under the fourteenth amendment of the United States constitution. I think that our formula, if presented to the Michigan supreme court, would very likely be upheld by the Michigan supreme court and I rely, in stating that, not only on the opinion of the 3 justices who dissented, but on the opinions of Mr. Justice Souris and Mr. Justice Smith, who concurred and who did not subscribe to the very limited opinion of Mr. Justice Kavanagh.

There is nothing in the opinion of the United States supreme court which would make the senate apportionment formula which we have provided in the new constitution in any way violative of the federal constitution. The problem is before that court at this time and I think it's extremely unfortunate that we are confronted this morning with an opinion which is, in my judgment, politically inspired and professionally valueless. (applause)

PRESIDENT NISBET: The Chair recognizes Mr. Nord.

MR. NORD: Mr. President, that's the first time I've been applauded before I spoke. (laughter) Thank you very much.

Mr. President, Mr. Van Dusen has opened the floor to a flood of comments. I hope we won't have a flood, but I would like to make this point: first of all, the attorney general's opinion cannot be dismissed as hogwash. But further—

PRESIDENT NISBET: Mr. Nord, would you move back just a little bit further from the microphone? Your voice would come through better.

MR. NORD: Would you make a suggestion of 20 or 30 feet?

PRESIDENT NISBET: This is no discourtesy. It's due to the operation of the mike. Mr. Nord.

MR. NORD: As Mr. Cudlip said, I didn't know we had a microphone here. Mr. President, there are 2 experts, or at least 2 people who have worked harder on apportionment in this convention than any other people. One of them is Mr. Hanna; the other is myself. Both of us have announced to the press previous to the holding of this meeting today that we believe that this 80-20 provision—which was drafted by Mr. Hanna over my opposition—is unconstitutional. He is a lawyer; I am a lawyer. We have had close contact with the subject. We both believe—unless he tells me to the contrary now—we both believe it is unconstitutional. The only court decision is the Michigan supreme court decision. They have stated that, in their opinion, when it reaches them it will be unconstitutional.

I am not advised, as Mr. Van Dusen says, that there is pending in the United States supreme court any review of the Scholle case. If that is so, I would like to be advised. I understand that somebody is thinking of filing a petition for certiorari, but I am not advised that there has been any such petition. As it stands right now the law has been announced by the supreme court of Michigan, and then as to the future we have the opinion of the attorney general. Then you have before you the opinions of both the people who worked the hardest—the lawyers—on this subject. All of them are on the same side of the issue. They all say that it's unconstitutional. If you wish to ignore that, you can do so. But I think that you should have that before you.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Mr. President and fellow delegates, I just wanted to make one comment at this time because I've been hearing so much around the state that we ought to take what we're given. And it reminds me an awful lot of the man who had $150 stolen from him, who then was told by the burglar that he'd be willing to give him 50 bucks and he ought to go home and be satisfied. I might say too, to Mrs. Cushman, that when I first decided to run for this office of delegate, I remember very distinctly that the league of women voters and others said that one of the very most important things that we were coming up here to decide was reapportionment. And they didn't say that they wanted half measures. They said they wanted reapportionment as it should be: by population. Now I might say to Mrs. Cushman and others who always bring this subject up—rather, they keep making the comment that we ought to take what we can get—that it's no different, her making that remark, than a judge saying, after a man has been ordered hung, that he'll only be dropped 10 feet instead of 30.

PRESIDENT NISBET: The question is on the amendment of Dr. Hannah. This is a record roll call vote. Mr. Downs.

MR. DOWNS: Mr. President, I would like to point out to the delegates, in as calm and as reasoned a fashion as I can, that the senate we now have in the state of Michigan is that under the 1908 constitution. The courts way back, before any present member of the state supreme court was even on the court—and that's how far back that goes—ruled that under the 1908 constitution there could not be a difference of more than 2 to 1 in population and did not approve a difference of more than 2 to 1. That's what we have now—it's temporarily stayed by one justice of the United States supreme court—that's what we have. The provision in this section would provide a population difference of 4½ to 1 and would take from the urban areas senatorial representation that we are entitled to under the 1908 constitution and that the Michigan state supreme court has ordered and, I will predict, will be in effect as soon as the United States supreme court acts. It's regrettable that the motion to recess was rejected because that would have given Delegate Van Dusen and me the opportunity to discuss what the highest court said rather than what he and I are predicting it will say. And therefore, I urge we vote against this and keep the 1908 language which has one house—the senate—on population, and the second house, for those who make such a fetish of area, on an area factor.

PRESIDENT NISBET: Dr. Hannah.

MR. J. A. HANNAH: Mr. President, in view of the tone of the discussion, I should like to submit a letter from the director of research and drafting of this convention and ask that the secretary read it into the record at this time.

PRESIDENT NISBET: The secretary will read.

SECRETARY CHASE: Letter from Charles W. Joiner, the associate dean of the University of Michigan law school, addressed to John Hannah, president, Michigan State University, under date of July 27, "Dear Dr. Hannah: I write as"—

MR. MADAR: Mr. President, I rise to a point of order.

PRESIDENT NISBET: Mr. Madar.

MR. MADAR: Shouldn't this only be done when there are no objections—

PRESIDENT NISBET: It is part of Dr. Hannah's remarks.

MR. MADAR: —and I am objecting.

PRESIDENT NISBET: This is a part of Dr. Hannah's remarks, Mr. Madar. They may be made. Mr. Chase will read.

SECRETARY CHASE: The letter reads:

Dear Dr. Hannah:

I write as the director of research and drafting for the constitutional convention although I am not now on the staff of the convention for my interest continues in the success and well being of that body. Perhaps I can contribute something to the solution of the problem facing you as a result of the recent decision in Scholle v. Hare. I shall not be present at the time you convene on August 1. It is important that you have an objective analysis of the constitutionality of the con con proposal to apportion the house and senate made after the Scholle case.

1. The problem is one of the constitutionality under the federal constitution. The supreme court of the United States is the final arbiter of this, not the supreme court of Michigan.

2. Contrary to anything in one of the opinions handed down by the supreme court of Michigan, the decisions in the 2 Michigan cases cited, Giddings v. Secretary of State, 93 Michigan 1, and Williams v. Secretary of State, 145 Michigan 447, which are the bases for the court's use of a 2 for 1 population standard do not stem from federal constitutional language but are merely stating a standard that was applicable to the language of the 1850 constitution requiring specific apportionment on the basis of population.

3. The supreme court of the United States has as yet given no indication that any standard based solely upon population will be required.

4. In fact, the contrary has been indicated by the supreme court for the thrust of Baker v. Carr, if any standards can be read into that case, is that any scheme of apportionment based on reason and rationality will be sustained. The same idea is expressed by Mr. Justice Stewart in his decision to stay Scholle v. Hare when he said that new issues were presented in the Scholle case that were not decided in Baker v. Carr.

5. Most of the litigation and judicial decisions in the various states in federal and state courts since Baker v. Carr has been based on the failure of the legislatures to carry out a state constitutional mandate to reapportion.

6. Decisions are being handed down by lower federal courts and state courts indicating that it is not necessary (unless required by a state constitution) to apportion on the basis of population in both houses (see the Maryland decision on this point).

7. The proposed constitutional provision has one house pretty largely based on population and the other house predicated upon a rational idea of ability to represent constituents effectively. This provision would in all probability be sustained by the supreme court of the United States if given a chance.

8. In the Scholle case the Michigan court does not squarely hold that the constitutional convention proposal is bad. Two judges do indicate in dictum that this would

be true but this dictum contains a bad fallacy for it stems from interpretation of language appearing in the 1908 constitution requirement of apportionment on the basis of population and is not a fair statement of the requirements of the equal protection clause of the federal constitution, the clause against which your proposal must be tested.

Two other judges concurred in the result but did not say that as a minimum, the standard test will be 2 for 1 population. These judges merely talked about the requirement of a rational scheme of apportionment. The 3 dissenting judges clearly would sustain the plan.

Thus it is not unlikely that even in the Michigan supreme court the con con plan, if approved by the people as a part of the constitution, would be sustained by the Michigan court. It seems clear, however, as clear as anything can be in this muddled area that even if it were not sustained by the Michigan supreme court, the supreme court of the United States would uphold it. There is nothing in your plan that violates the equal protection clause of the United States constitution or any other relevant provision, as interpreted by the supreme court of the United States. Only if you permit in some way a vote on your plan and it is adopted can it ever be tested. It can only be tested fairly as a part of a constitution.

Sincerely yours,
Charles W. Joiner.

PRESIDENT NISBET: The Chair recognizes Mr. Wanger.

MR. WANGER: Mr. President, fellow delegates, because of the limitation of time, which we are all operating under in this one day session, but more important, because I believe that the issue has now been fully discussed, I move the previous question.

MR. NORRIS: Mr. President.

PRESIDENT NISBET: The question is on the motion of Mr. Wanger for the previous question. Is the demand seconded?

MR. NORRIS: Mr. President.

PRESIDENT NISBET: Sufficient number up.

MR. NORRIS: I'd like to move, Mr. President, to limit debate to 10 minutes.

PRESIDENT NISBET: The question is on the motion of Mr. Norris that debate be limited to 10 minutes. Those in favor of the motion say aye. Opposed, no.

The motion prevails. Mr. Norris.

MR. NORRIS: Mr. President, I would like at this time to express the observation—

PRESIDENT NISBET: The convention will be in order.

MR. NORRIS: —that the opinion of the attorney general be incorporated in the record without being read, in light of the Chair's ruling on Mr. Madar's point of objection to the reading of Mr. Joiner's letter into the record. I'd like to have that included as part of my remarks as well and ask that that be done, sir.

PRESIDENT NISBET: It will be so included.

Following is the opinion:

State of Michigan

Frank J. Kelley, Attorney General

Constitutional law: equal protection of the laws under the fourteenth amendment to the constitution of the United States.

Senate: apportionment of Michigan senate under proposed constitution.

Article IV, section 2 and section 6 of the schedule and temporary provisions of the proposed constitution perpetuate invidious discrimination in Michigan senatorial districts now practiced under article V, section 2 of the constitution of 1908, as amended by the people in 1952 and condemned by the Michigan supreme court in Scholle v. Hare (July 18, 1962), 367 Michigan 176, and are unconstitutional as violative of the fourteenth amendment to the constitution of the United States.

In the event the provisions of article IV, section 2 of the proposed constitution are effective upon approval of the revised constitution by the people, article IV, section 2 is unconstitutional as in violation of the fourteenth amendment to the constitution of the United States.

Opinion 4093 July 31, 1962

Mr. Tom Downs
Vice President
Michigan Constitutional Convention
Constitution Hall
Lansing, Michigan

I am in receipt of your letter of July 23 in which you indicate that the Michigan constitutional convention of 1961-1962 has proposed article IV, sections 2 and 6 as they relate to the apportionment of the Michigan legislature.

Article IV, section 2 provides as follows:

The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned an apportionment factor equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senate districts shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

The constitutional convention proposes a commission on legislative apportionment as set forth in article IV, section 6, which reads in pertinent part as follows:

A commission on legislative apportionment is hereby established consisting of eight persons, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of

a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One member of the commission shall be selected by each political party organization from each of the following four regions: (1) The upper peninsula; (2) The northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) Southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) Southeastern Michigan, the remaining counties of the state.

Based upon these facts you ask the following questions:

1. Is article IV, section 2 of the proposed constitution constitutional?

2. Is article IV, section 6 of the proposed constitution constitutional?

In response to your first question, not only is it necessary for me to consider section 2 of article IV, but also section 6 of the schedule and temporary provisions which has been made a part of the proposed constitution as approved on the third reading by the constitutional convention on May 11, 1962. This portion of the schedule and temporary provisions states:

> The state shall be districted for the purpose of electing senators in accordance with the provisions of Section 2 of Article IV of this constitution, after the official publication of the total population count of the 1970 decennial federal census. Until the apportionment of the senate following the 1970 census, the senatorial districts under the 1908 constitution shall remain intact except that upon the adoption of this constitution each of the counties of Kent, Genesee, Macomb and Oakland shall be divided by the apportionment commission into two senatorial districts and Wayne county into eight senatorial districts in accordance with this constitution. The legislature may give prior effect to Section 2 of Article IV of this constitution, which action shall not be subject to veto by the governor.

A plain reading of section 6 of the schedule and temporary provisions indicates that the present apportionment of the Michigan senate as provided by article V, section 2 of the Michigan constitution of 1908 as amended by the people in 1952, shall remain intact with the exception that the counties of Kent, Genesee, Macomb and Oakland shall be divided by the apportionment commission into 2 senatorial districts, and Wayne county into 8 senatorial districts in accordance with this constitution in the event the proposed constitution is approved by the people. However, the legislature is given authority to give prior effect to section 2 of article IV of the constitution, which action shall not be subject to veto by the governor.

Assuming that the proposed constitution is adopted, presumably in April of 1963, the constitution shall not become effective until January 1, 1964. Upon such contingency the senate would be increased from 34 members to 38 with the 3 additional seats to be divided among the counties of Genesee, Macomb and Oakland and an additional seat given to Wayne.

It should be observed that this portion of the schedule and temporary provisions has no effect upon Kent county, already possessed of 2 senators under the constitution of 1908, as amended.

Unless the legislature were to act to give earlier implementation to article IV, section 2 of the proposed constitution, Michigan senatorial districts are provided by article V, section 2 of the constitution of 1908 and would prevail until the year 1970 with the exception of the 4 additional senatorial seats to be divided among Genesee, Macomb, Oakland and Wayne counties respectively.

The Michigan supreme court in Scholle v. Hare (July 18, 1962), 367 Mich. 176, has struck down the senate apportionment provided by article V, section 2 of the Michigan constitution of 1908, as amended. On July 27, 1962, the Honorable Potter Stewart, associate justice of the supreme court of the United States, stayed the judgment of the Michigan supreme court pending the timely filing of a petition for a writ of certiorari with the stay to continue pending the final disposition of the case upon timely filing of the petition for the writ of certiorari.

While it is true that Mr. Justice Stewart stayed the judgment of the Michigan supreme court, nevertheless the decision of the Michigan supreme court in Scholle v. Hare, supra, establishes the law in the state of Michigan and unless the United State supreme court assumes jurisdiction of Scholle v. Hare and reverses the decision of the Michigan supreme court, the decision in Scholle v. Hare, supra, will represent the leading case on apportionment in the state of Michigan.

Under its decision, Scholle v. Hare holds that article V, section 2 of the Michigan constitution, as amended by the people in 1952, violates the equal protection clause of the fourteenth amendment to the constitution of the United States in that senatorial districts provided in the Michigan constitution are invidiously discriminatory.

Under article IV, section 2 of the proposed constitution and section 6 of the schedule and temporary provisions, Michigan senatorial districts are to be substantially continued in their present form until 1970 with the exception of 4 additional seats to be awarded upon the effective date of the constitution, subject to earlier implementation by the legislature.

The conclusion is imperative that the delegates to the Michigan constitutional convention, if they retain article IV, section 2 and section 6 of the schedule and temporary provisions in their present form, will be continuing the senatorial districts that our court has struck down as invidiously discriminatory. It is patent that the additional 4 seats do not correct the disparity in population between Michigan senatorial districts. At best the addition of 1 senatorial seat to Oakland county, Genesee county, Macomb county and Wayne county, reduces the disparity from the extreme 12½ to 1 to about 6 to 1. In any event, it is my opinion that the majority holding in Scholle v. Hare, supra, would demand that such provisions fall under the sweep of the fourteenth amendment to the constitution of the United States.

Under the concurring opinion of Mr. Justice Souris, it must be concluded that such disparity would be neither minor nor unavoidable so that the constitutional provisions in question would be discriminatory and in violation of the equal protection clause to the fourteenth amendment. Nor does the fact that the schedule authorizes the legislature to implement article IV, section 2 of the proposed constitution at an earlier time than 1970 supply constitutional validity.

The Michigan supreme court in Rassner v. Federal Collateral Society, 299 Mich. 206, in passing upon the constitutionality of a statute which provided a summary proceeding for recovery of property pawned without the owner's consent although actual notice was given, held that due process of law cannot depend upon the grace or favor of the court to give notice and opportunity for hearing. The constitutionality of an act must depend upon the provisions of the act itself.

Similarly in Ridenour v. County of Bay, 366 Mich. 225, the court struck down a bond validation statute for failure to afford due process of law to persons affected under it even though the court had provided notice on its own order. The court said that the due process of law had to be afforded by the statute itself rather than by the whim and caprice of the court. By analogy, the test of article IV, section 2 of the proposed constitution and section 6 of the schedule and temporary provisions, must be made by the

language of the constitution itself and not by the possibility that the legislature may choose to implement article IV, section 2 at some earlier time than 1970. Equal protection of the laws cannot be premised upon the favor of a majority vote of the legislature to give earlier implementation. Therefore it is my opinion that article IV, section 2 of the proposed constitution of the 1961-1962 constitutional convention violates the equal protection clause of the constitution of the United States.

I am, of course, aware of the fact that under the rules of the constitutional convention the delegates to the constitutional convention by 2/3 vote may suspend the rules and make changes to the document adopted on May 11, 1962. It has been suggested that section 6 of the schedule and temporary provisions be changed to make article IV, section 2 immediately effective upon the adoption of the constitution. Consequently it is necessary for me to consider the constitutional validity of article IV, section 2 in light of this possibility.

At the outset it is necessary to state briefly the proposed scheme of operation of the particular portion of the constitution. The framers would apportion the senate on 2 bases:

1. Upon a formula for each county unit based upon percentage of land area and a percentage of population based upon the last federal decennial census, multiplied by the factor 4.

2. After arriving at an apportionment factor for each county to treat counties with 13 or more apportionment factors one way and those with less than 13 apportionment factors in another.

Significantly the last sentence of subsection (2) of section 2 of the article reveals the true intent of the framers when it states, "Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards."

The conclusion is inescapable that the delegates to the constitutional convention have labored to preserve the present system of apportionment found constitutionally invalid in Scholle v. Hare, supra, and to sustain the present districting under a formula that practices discrimination twice against population not only through dilution by area but also through dilution by county depending upon apportionment factors attributed to the county under the formula.

The Michigan supreme court has said in Attorney General, ex rel Eaves, v. State Bridge Commission, 277 Mich. 373, that the state may not do indirectly that which it is forbidden to do directly. It is apparent that the provisions of article IV, section 2 of the proposed constitution present a patent effort to preserve the invidious discrimination in senatorial districts condemned in Scholle v. Hare, supra, by indirection.

Historically in Michigan the senate has been apportioned on a population basis as near as may be but along county lines. Giddings v. Secretary of State, 93 Mich. 1, Williams v. Secretary of State, 145 Mich. 447. See excellent discussion of the history of the apportionment of the Michigan senate in the dissenting opinion of Mr. Justice Smith in Scholle v. Hare, 360 Mich. 1.

The history of the house of representatives reveals that it has not been apportioned upon a strict population basis because the people have provided that certain governmental units, such as townships or cities, shall not be divided in the formation of a representative district and each county shall be entitled to a separate representative when it has attained a population equal to a moiety of the ratio of representation. See article IV, section 4 of the constitution of 1835; article IV, section 3 of the constitution of 1850, and article V, section 3 of the constitution as amended by the people in 1952.

While article IV, section 3 of the proposed constitution requires house of representative districts to be apportioned on a population basis, nevertheless this portion of the proposed constitution imposes requirements that each county which has a population of not less than 7/10 of 1 percent of the population of the state shall constitute a separate representative district, subject to other limitations as well.

It must be concluded, therefore, that under the proposed constitution neither house of the Michigan legislature is apportioned upon a strict population basis without any other factor.

While the United States supreme court has not implemented Baker v. Carr, 369 US 186, with a final definition as to what factors may be considered in the apportionment of state legislatures in order to satisfy the equal protection clause to the constitution of the United States, nevertheless since Baker v. Carr, supra, there has been an unmistakable flow of opinions of 3 judge federal district courts which have enumerated a rule that in my judgment is probably controlling.

Guidance may be obtained from the 3 judge federal district court that reconsidered Baker v. Carr, (June 22, 1962), on remand from 369 US 186, 179 Fed. Supp. 824 (Tennessee), and rendered an unanimous opinion that required the state of Tennessee to reapportion at least one house of the Tennessee legislature on a strict population basis without regard to any other factor. In Baker v. Carr, supra, on remand, the court tested the reapportionment of the Tennessee house and senate by the test of rationality based upon population, area and governmental units. The court recognized that one house could by reasonable classification take into consideration the protection and recognition to its less populous governmental units so that apportionment upon the 2/3 population—governmental unit basis—was permissible provided that the other house was on a strict population basis.

To the same effect is Toombs v. Fortson (May 25, 1962), 205 Fed. Supp. 248 (Georgia), where the 3 judge federal district court held that one of the houses of the Georgia legislature had to be on a strict population basis recognizing that it may be necessary for both houses to be on a strict population basis, but the court was hesitant to order this in the absence of a definitive decision of the United States supreme court.

Likewise in Sims v. Frink (April 14, 1962) 205 Fed. Supp. 245 (Alabama), a 3 judge federal district court required that at least one of the houses of the Alabama state legislature be apportioned upon a strict population basis without any other factor.

I am persuaded that the aforesaid decisions of the various federal district courts represent the very minimum that will serve as the basis of final definition of the fourteenth amendment to the constitution of the United States as may be laid down by the supreme court of the United States, although it is my considered judgment that a rational plan to give constitutional validity to the other house must recognize population as an important factor.

Under these authorities it must be concluded that since neither section 3 nor 4 of article IV of the proposed constitution provides for apportionment of either house of the Michigan legislature upon a strict population basis, article IV, section 2, as it relates to the senate, must fall as violative of the fourteenth amendment to the constitution of the United States.

While we recognize that the aforesaid authorities are those of lower federal district courts, nevertheless they offer sufficient guidance to inform the Michigan constitutional convention of 1961-1962 that article IV, section 2, in my opinion, violates the equal protection clause of the fourteenth amendment to the United States constitution.

Due to the limitation in time it will be necessary for my office to consider the second question separately and the opinion will be submitted to you as soon as it is ready.

Frank J. Kelley, attorney general.

MR. NORRIS: Now, with regard to an observation that

I should like to make on my own on the matter now before us, Mr. President, I think that what we ought to recognize is the issue involved in the matter before us and the matter before the people of the state of Michigan. As I understand it, the Michigan supreme court stated that the freezing and other aspects of the 1952 amendment and so called balanced legislature in relation to the senate was unconstitutional, and in so doing stated also that the standard in the 1908 constitution thereby becomes the law of the state of Michigan. As against that proposition you have a formula in the proposed document before us. And it seems to me the issue is clear: if you want a population standard, then you support the defeat of the constitution and the recognition that 1908, according to the inhabitants thereof, then becomes the standard of apportionment; if you want a standard other than that, then you support the proposed document standard. It seems to me that is the issue involved in the question on approval of section 6 or on approval of the constitution as a whole.

PRESIDENT NISBET: The question is on the amendment of Dr. Hannah. It is a record roll call vote. Those in favor of the amendment of Dr. Hannah to delete section 6 will vote aye as their names are called. Those opposed will vote no. The secretary will call the roll.

The roll was called and the delegates voted as follows:

Yeas—94

Allen	Hanna, W. F.	Pugsley
Andrus, Miss	Hannah, J. A.	Radka
Anspach	Haskill	Rajkovich
Batchelor	Hatch	Richards, J. B.
Beaman	Heideman	Richards, L. W.
Bentley	Higgs	Romney
Blandford	Howes	Rood
Bonisteel	Hubbs	Rush
Brake	Iverson	Seyferth
Brown, G. E.	Judd, Mrs.	Shackleton
Butler, Mrs.	Karn	Shaffer
Conklin, Mrs.	Kirk, S.	Shanahan
Cudlip	Knirk, B.	Sharpe
Cushman, Mrs.	Koeze, Mrs.	Sleder
Danhof	Krolikowski	Spitler
Dehnke	Kuhn	Stafseth
Dell	Lawrence	Staiger
DeVries	Leppien	Stamm
Donnelly, Miss	Martin	Sterrett
Doty, Dean	McCauley	Stevens
Doty, Donald	McGowan, Miss	Thomson
Durst	McLogan	Tubbs
Elliott, A. G.	Millard	Turner
Erickson	Mosier	Tweedie
Everett	Nisbet	Upton
Farnsworth	Page	Van Dusen
Figy	Perras	Wanger
Gadola	Plank	White
Goebel	Pollock	Wood
Gover	Powell	Woolfenden
Gust	Prettie	Yeager
Habermehl		

Nays—47

Austin	Follo	McAllister
Baginski	Ford	Murphy
Balcer	Garvin	Nord
Barthwell	Greene	Norris
Binkowski	Hart, Miss	Ostrow
Bledsoe	Hatcher, Mrs.	Pellow
Boothby	Hood	Perlich
Bowens	Hoxie	Sablich
Bradley	Hutchinson	Snyder
Brown, T. S.	Jones	Stopczynski
Buback	Kelsey	Suzore
Douglas	Leibrand	Walker
Downs	Lesinski	Wilkowski
Elliott, Mrs. Daisy	Liberato	Young
Faxon	Madar	Youngblood
Finch	Mahinske	

SECRETARY CHASE: On the adoption of the amendment to strike out section 6, the yeas are 94; the nays are 47.

PRESIDENT NISBET: The amendment is adopted.

Following is explanation of vote submitted by Mr. McAllister:

My reason for voting no on the deletion of section 6 of the schedule is that the apportionment section of the constitution in my opinion is unconstitutional.

Following is explanation of vote submitted by Mr. Leibrand:

Section 6 of the constitutional schedule continues an extra senate seat to Kent county and allots an extra seat each to Genesee, Macomb and Oakland counties immediately. Reapportionment of the senatorial districts of the rest of the state would follow the 1970 census.

The amendment to delete section 6, made August 1, 1962, would advance the general senatorial reapportionment date to as soon as possible after the adoption of the new constitution.

I voted against the amendment for several reasons:

1. The change is a very important one. Many of the delegates never heard of the proposed amendment until about 9:00 p.m. on the evening of July 31. Most of the delegates never heard of it until it was offered on the floor of the convention at 11:00 a.m. on August 1. I believe such an important change deserves much more extended consideration.

2. Many things, particularly decisions of the United States supreme court and the Michigan supreme court, have occurred since this convention adjourned on May 11. The body most affected by the change is the Michigan state senate itself. The senate has been studying and working on this problem for the past 2 weeks or more, and undoubtedly has more information on the problem than do the delegates of this convention. I am opposed to deleting section 6 until such time as a special committee of this convention has conferred at length with the proper committee or committees of the state senate regarding the course to take.

3. I realize that what I suggest will require further adjournment of this convention. I have no desire to return to Lansing again, but I would prefer to do this rather than make an irremediable error. It must be remembered that once the convention adjourns sine die, its powers are exhausted and, however bad an error may be, that error cannot be corrected.

MR. FORD: Mr. President.

PRESIDENT NISBET: Mr. Ford.

MR. FORD: I'd like to make a parliamentary inquiry. It was my understanding that the specific language of the rules by which we were to play today was such that no substantive change will be made in the document as it was voted upon by a majority of the delegates when last we were assembled. I find difficulty with myself examining this thing, trying to find that this is not substantive. We have now taken an entire section out of the language. And I ask whether this now means that as a matter of fact, the rules that we are playing under today permit amendments from this floor from people such as Dr. Hannah during the consideration of a committee report to the substance of the constitution itself.

PRESIDENT NISBET: Mr. Ford, the rules were suspended by this convention for consideration of this special amendment. It does not open up the rest of the document.

The next order of business is the **report of the select committee on action against the secretary of state.** The chairman of the committee, Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, the select committee charged with the responsibility for the action against the secretary of state dealing with the date of submission of the document has delivered its report to the secretary and I'll ask that he read it. It proposes and recommends an amendment changing the date of submission from November to April and, to anticipate Mr. Ford's question, this is a specific exception to the rule under which we're operating provided for in that rule.

SECRETARY CHASE: The select committee on action

against the secretary of state, by Mr. Van Dusen, chairman, submits the following report:

In accordance with Resolution 96, the committee on action against secretary of state on May 14, 1962, filed with the circuit court for the county of Ingham, a petition for declaration of rights in an action entitled, Stephen S. Nisbet, President of the Michigan Constitutional Convention of 1961-1962 v. James M. Hare, Secretary of State. The relief sought was a declaration that the convention has the right to provide for submission of the proposed new constitution to the electors at the general election to be held November 6, 1962. The summons and petition were served on the secretary of state on the same day.

On May 22, having had no response from the attorney general, petitioner filed a motion for the entry of a decree. On May 25, the secretary of state appeared specially by the attorney general and moved to dismiss the petition on the ground that the case did not present an actual controversy. The trial court heard argument on the attorney general's motion on June 1 and on June 6 rendered an opinion denying the motion to dismiss. An order to that effect was entered on June 11.

Instead of proceeding to file an answer, the attorney general then filed an application to the supreme court for leave to appeal. This application was granted by the supreme court and the attorney general, on July 2, filed a claim of appeal.

The attorney general has not yet filed a brief and he states that he does not intend to do so until after August 7.

It is obvious that no judicial determination of the right of the constitutional convention to require submission of the proposed constitution to the electors on November 6 will be made in time to be useful to the convention. Accordingly, the committee recommends:

1) That section 15 [formerly section 16] of the schedule and temporary provisions of the proposed constitution be amended by striking from the first sentence the words "Tuesday after the first Monday of November, 1962" and inserting "first Monday in April, 1963."

2) That the committee be authorized to discontinue the action entitled, Nisbet v. Hare.

Richard C. Van Dusen, chairman.

MR. VAN DUSEN: Mr. President, I move the adoption of the report.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that the report be adopted. Those in favor will say aye. Opposed, no.

The report is adopted. Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, in compliance with our rules, I think it would now be necessary to take a roll call vote on the amendment to the constitution changing the date.

PRESIDENT NISBET: Mr. Chase will read the amendment.

SECRETARY CHASE: The amendment recommended in the report is as follows:

1. Amend the schedule, section 15 [formerly section 16] (column 2) line 11, after "held on the" by striking out "Tuesday after the first Monday of November, 1962.", and inserting "first Monday in April, 1963.".

PRESIDENT NISBET: The secretary will call the roll. Those in favor of the amendment will vote aye as your name is called. Those opposed will vote no.

The roll was called and the delegates voted as follows:

Yeas—141

Allen	Goebel	Page
Andrus, Miss	Gover	Pellow
Anspach	Greene	Perlich
Austin	Gust	Perras
Baginski	Habermehl	Plank
Balcer	Hanna, W. F.	Pollock
Barthwell	Hannah, J. A.	Powell
Batchelor	Hart, Miss	Prettie
Beaman	Haskill	Pugsley
Bentley	Hatch	Radka
Binkowski	Hatcher, Mrs.	Rajkovich
Blandford	Heideman	Richards, J. B.
Bledsoe	Higgs	Richards, L. W.
Bonisteel	Hood	Romney
Boothby	Howes	Rood
Bowens	Hoxie	Rush
Bradley	Hubbs	Sablich
Brake	Hutchinson	Seyferth
Brown, G. E.	Iverson	Shackleton
Brown, T. S.	Jones	Shaffer
Buback	Judd, Mrs.	Shanahan
Butler, Mrs.	Karn	Sharpe
Conklin, Mrs.	Kelsey	Sleder
Cudlip	Kirk, S.	Snyder
Cushman, Mrs.	Knirk, B.	Spitler
Danhof	Koeze, Mrs.	Stafseth
Dehnke	Krolikowski	Staiger
Dell	Kuhn	Stamm
DeVries	Lawrence	Sterrett
Donnelly, Miss	Leibrand	Stevens
Doty, Dean	Leppien	Stopczynski
Doty, Donald	Lesinski	Suzore
Douglas	Liberato	Thomson
Downs	Madar	Tubbs
Durst	Mahinske	Turner
Elliott, A. G.	Martin	Tweedie
Elliott, Mrs. Daisy	McAllister	Upton
Erickson	McCauley	Van Dusen
Everett	McGowan, Miss	Walker
Farnsworth	McLogan	Wanger
Faxon	Millard	White
Figy	Mosier	Wilkowski
Finch	Murphy	Wood
Follo	Nisbet	Woolfenden
Ford	Nord	Yeager
Gadola	Norris	Young
Garvin	Ostrow	Youngblood

Nays—0

SECRETARY CHASE: On the adoption of the amendment, the yeas are 141; the nays are none.

PRESIDENT NISBET: The amendment is adopted. The question now is on the **final passage of the constitution as amended** this morning. Those who are in favor will answer aye as your names are called. Those opposed will answer nay. The secretary will call the roll.

The roll was called and the delegates voted as follows:

Yeas—98

Allen	Gover	Powell
Andrus, Miss	Gust	Prettie
Anspach	Habermehl	Pugsley
Balcer	Hanna, W. F.	Radka
Batchelor	Hannah, J. A.	Rajkovich
Beaman	Haskill	Richards, J. B.
Bentley	Hatch	Richards, L. W
Blandford	Heideman	Romney
Bonisteel	Higgs	Rood
Boothby	Howes	Rush
Brake	Hoxie	Seyferth
Brown, G. E.	Hubbs	Shackleton
Butler, Mrs.	Hutchinson	Shaffer
Conklin, Mrs.	Iverson	Sharpe
Cudlip	Judd, Mrs.	Sleder
Cushman, Mrs.	Karn	Spitler
Danhof	Kirk, S.	Stafseth
Dehnke	Knirk, B.	Staiger
Dell	Koeze, Mrs.	Stamm
DeVries	Kuhn	Sterrett
Donnelly, Miss	Lawrence	Stevens
Doty, Dean	Leppien	Thomson
Doty, Donald	Martin	Tubbs
Durst	McCauley	Turner
Elliott, A. G.	McGowan, Miss	Tweedie
Erickson	McLogan	Upton
Everett	Millard	Van Dusen
Farnsworth	Mosier	Wanger
Figy	Nisbet	White
Finch	Page	Wood

Follo	Perras	Woolfenden
Gadola	Plank	Yeager
Goebel	Pollock	

Nays—43

Austin	Greene	Nord
Baginski	Hart, Miss	Norris
Barthwell	Hatcher, Mrs.	Ostrow
Binkowski	Hood	Pellow
Bledsoe	Jones	Perlich
Bowens	Kelsey	Sablich
Bradley	Krolikowski	Shanahan
Brown, T. S.	Leibrand	Snyder
Buback	Lesinski	Stopczynski
Douglas	Liberato	Suzore
Downs	Madar	Walker
Elliott, Mrs. Daisy	Mahinske	Wilkowski
Faxon	McAllister	Young
Ford	Murphy	Youngblood
Garvin		

SECRETARY CHASE: On the adoption of the constitution as amended, the yeas are 98; the nays are 43. (applause)

PRESIDENT NISBET: The **constitution** is adopted.

For the constitution as adopted, see below, page 3317.

Because of the hour, it being almost noon, the Chair recognizes Mr. Van Dusen.

MR. VAN DUSEN: Mr. President, I move that the convention now stand in recess until 2:00 p.m.

PRESIDENT NISBET: The question is on the motion of Mr. Van Dusen that we recess until 2:00 p.m. Those in favor will say aye. Opposed, no.

The motion prevails. We are recessed until 2:00 o'clock.

[Whereupon, at 11:50 o'clock a.m., the convention recessed; and, at 2:00 o'clock p.m., reconvened.]

Will the delegates please take their seats. The convention will please come to order.

SECRETARY CHASE: Mr. President, a quorum of the convention is present.

PRESIDENT NISBET: I think we should recognize the fact that many of our employees are voluntarily back with us today, meeting with the delegates. I'm sure all of us are very happy to have them here. It brings about a happy result to see them and I think we ought to give them a good hand. (applause) Mr. Chase has an announcement.

SECRETARY CHASE: There are 3 announcements that possibly should have been made before we recessed for lunch.

First, there is mail for all of the delegates in the mail room downstairs.

Just prior to the May 11 adjournment, several of the delegates took out, on loan, sets of convention slides which have not been returned. Missing from our files are 12 complete sets of slides. Since we frequently have call from other delegates for the use of these slides, we would appreciate their return as soon as possible. Ink White, chairman of the committee on public information.

I am sure the delegates recall the lady on the civic center staff who took such good care of keeping the windows clean and the place well slicked up, who had to go to the hospital for a very critical operation. A number of the delegates contributed to a fund to help her over her financial difficulties. I have the following card:

> It is very difficult to express my appreciation to all the wonderful people of con con. Let me say, with my heart, your kindness and generosity will always be remembered.
>
> Sincerely,
> Freda Adams.

PRESIDENT NISBET: Since the adjournment on May 11, we have added 2 new associate members to the delegation: Mrs. Charles Follo and Mrs. Gil Wanger.

I asked Charlie if Mrs. Follo was present so that he might present her, but he said she isn't. We are sorry, Charlie, she couldn't be with us.

Mr. Wanger, is your associate delegate present? Would you present her?

[Whereupon, the delegates accorded Mrs. Wanger a standing ovation.]

At the final session before the long recess the president was authorized to name a reunion committee for the constitutional convention. Accordingly, the **president appoints,** as members of the reunion committee: Mr. Erickson, Mrs. Koeze, Messrs. Jones, Bowens, Brake, Mrs. Conklin, Mr. Dean Doty, Mrs. Daisy Elliott, Messrs. Faxon, Kelsey, Kuhn, Powell, Sharpe, Wanger, White and Norris.

Without objection, the appointments are approved. You will notice that most of these delegates are within the area of Lansing, Detroit or Grand Rapids for their ease in getting together when they have to meet. Mr. Claud Erickson is chairman of the committee.

Returning to the order of business, **approval of address to people.** We will take up the **report of the committee on public information.** Mr. White, chairman.

MR. WHITE: Mr. President, under date of June 26, 1962, each delegate was mailed proof copies of the proposed address to the people. Since that time our committee has received numerous suggestions for corrections, additions, deletions and so on. Our committee has met and gone over these suggestions and they have been, for the most part, agreed to. I might say, parenthetically, the address in its present corrected form represents the writing and editing of upwards of 50 of our delegates.

Under date of July 27, 1962, each of you was mailed a 16 page multilith report which outlined in detail some 108 corrections. This communication also carried the recommendation that we be authorized to correct the text of the constitution as it appears in the address to conform with the style and drafting changes adopted at today's session, and to offer comments accordingly, if necessary. All of this material has been delivered again to each delegate's desk today. Additionally, you have a single white multilith sheet from our committee containing brief addenda to this 16 page report.

It seems to me, Mr. President, the delegates have had ample time to consider these matters, and to expedite our final deliberations, I move that the report of the public information committee, with the recommended addenda, be considered read.

PRESIDENT NISBET: Without objection, it is so ordered.

Following is the report as submitted and considered read:

After careful consideration of suggestions from delegates, your committee on public information recommends the adoption of the following changes in the proof copy of the address to the people:

For document incorporating following changes, see below, page 3355. Page numbers in report refer to document pages.

1. Amend page 2, second full paragraph, line 3, after "that one" by striking out "must" and inserting "should"; to improve phraseology.

2. Amend page 2, third full paragraph, line 1, by striking out "Ordered by popular vote, its delegates selected by the people on the basis of one from each senatorial and representative district, the Constitutional Convention of 1961-62 met in Lansing on October 3, 1961.", and inserting "The convention was ordered by popular vote in April of 1961. There were 144 delegates, representing Michigan's 34 State Senatorial districts and 110 State Representative seats. They were elected in statewide voting on September 12, 1961, and convened at Lansing on October 3, 1961."; to improve awkward sentence construction and correct error by indicating "seats" rather than representative "districts."

3. Amend page 2, fifth full paragraph, line 2, after "overlapped" by striking out "each other"; to improve phraseology.

4. Amend page 2, fifth full paragraph, line 6, after

CONSTITUTION
OF THE
STATE OF MICHIGAN

as finally adopted
by the Convention
August 1, 1962

PREAMBLE

We, the people of the State of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

ARTICLE I

Declaration of Rights

Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.

Sec. 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Sec. 3. The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

Sec. 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.

Sec. 5. Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

Sec. 6. Every person has a right to keep and bear arms for the defense of himself and the state.

Sec. 7. The military shall in all cases and at all times be in strict subordination to the civil power.

Sec. 8. No soldier shall, in time of peace, be quartered in any house without the consent of the owner or occupant, nor in time of war, except in a manner prescribed by law.

Sec. 9. Neither slavery, nor involuntary servitude unless for the punishment of crime, shall ever be tolerated in this state.

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

Sec. 11. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

Sec. 12. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion or invasion the public safety may require it.

Sec. 13. A suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

Sec. 14. The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. In all civil cases tried by 12 jurors a verdict shall be received when 10 jurors agree.

Sec. 15. No person shall be subject for the same offense to be twice put in jeopardy. All persons shall, before conviction, be bailable by sufficient sureties, except for murder and treason when the proof is evident or the presumption great.

Sec. 16. Excessive bail shall not be required; excessive fines shall not be imposed; cruel or unusual punishment shall not be inflicted; nor shall witnesses be unreasonably detained.

Sec. 17. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Sec. 18. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Sec. 19. In all prosecutions for libels the truth may be given in evidence to the jury; and, if it appears to the jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the accused shall be acquitted.

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in all courts not of record; to be informed of the nature of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; to have an appeal as a matter of right; and in courts of record, when the trial court so orders, to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.

Sec. 21. No person shall be imprisoned for debt arising out of or founded on contract, express or implied, except in cases of fraud or breach of trust.

Sec. 22. Treason against the state shall consist only in levying war against it or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or on confession in open court.

Sec. 23. The enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE II

Elections

Sec. 1. Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes.

Sec. 2. The legislature may by law exclude persons from voting because of mental incompetence or commitment to a jail or penal institution.

Sec. 3. For purposes of voting in the election for president and vice-president of the United States only, the legislature may by law establish lesser residence requirements for citizens who have resided in this state for less than six months and may waive residence requirements for former citizens of this state who have removed herefrom. The legislature shall not permit voting by any person who meets the voting residence requirements of the state to which he has removed.

Sec. 4. The legislature shall enact laws to regulate the time, place and manner of all nominations and elections, except as otherwise provided in this constitution or in the constitution and laws of the United States. The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames.

Sec. 5. Except for special elections to fill vacancies, or as otherwise provided in this constitution, all elections for national, state, county and township offices shall be held on the first Tuesday after the first Monday in November in each even-numbered year or on such other date as members of the congress of the United States are regularly elected.

Sec. 6. Whenever any question is required to be submitted by a political subdivision to the electors for the increase of the ad valorem tax rate limitation imposed by Section 6 of Article IX for a period of more than five years, or for the issue of bonds, only electors in, and who have property assessed for any ad valorem taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon. All electors in the district or territory affected may vote on all other questions.

Sec. 7. A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party.

Sec. 8. Laws shall be enacted to provide for the recall of all elective officers except judges of courts of record upon petition of electors equal in number to 25 percent of the number of persons voting in the last preceding election for the office of governor in the electoral district of the officer sought to be recalled. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

Sec. 9. The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

The legislature shall implement the provisions of this section.

ARTICLE III

General Government

Sec. 1. The seat of government shall be at Lansing.

Sec. 2. The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

Sec. 3. There shall be a great seal of the State of Michigan and its use shall be provided by law.

Sec. 4. The militia shall be organized, equipped and disciplined as provided by law.

Sec. 5. Subject to provisions of general law, this state or any political subdivision thereof, any governmental authority or any combination thereof may enter into agreements for the performance, financing or execution of their respective functions, with any one or more of the other states, the United States, the Dominion of Canada, or any political subdivision thereof unless otherwise provided in this constitution. Any other provision of this constitution notwithstanding, an officer or employee of the state or of any such unit of government or subdivision or agency thereof may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service. The legislature may impose such restrictions, limitations or conditions on such service as it may deem appropriate.

Sec. 6. The state shall not be a party to, nor be financially interested in, any work of internal improvement, nor engage in carrying on any such work, except for public internal improvements provided by law.

Sec. 7. The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed.

Sec. 8. Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.

ARTICLE IV

Legislative Branch

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after

publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

Sec. 7. Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents. The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the legislature.

Sec. 8. No person holding any office, employment or position under the United States or this state or a political subdivision thereof, except notaries public and members of the armed forces reserve, may be a member of either house of the legislature.

Sec. 9. No person elected to the legislature shall receive any civil appointment within this state from the governor, except notaries public, from the legislature, or from any other state authority, during the term for which he is elected.

Sec. 10. No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.

Sec. 11. Senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

Sec. 12. The compensation and expense allowances of the members of the legislature shall be determined by law. Changes in compensation or expense allowances shall become effective only when legislators commence their terms of office after a general election.

Sec. 13. The legislature shall meet at the seat of government on the second Wednesday in January of each year at twelve o'clock noon. Each regular session shall adjourn without day, on a day determined by concurrent resolution, at twelve o'clock noon. Any business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session.

Sec. 14. A majority of the members elected to and serving in each house shall constitute a quorum to do business. A smaller number in each house may adjourn from day to day, and may compel the attendance of absent members in the manner and with penalties as each house may prescribe.

Sec. 15. There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council's operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state.

Sec. 16. Each house, except as otherwise provided in this constitution, shall choose its own officers and determine the rules of its proceedings, but shall not adopt any rule that will prevent a majority of the members elected thereto and serving therein from discharging a committee from the further consideration of any measure. Each house shall be the sole judge of the qualifications, elections and returns of its members, and may, with the concurrence of two-thirds of all the members elected thereto and serving therein, expel a member. The reasons for such expulsion shall be entered in the journal, with the votes and names of the members voting upon the question. No member shall be expelled a second time for the same cause.

Sec. 17. Each house of the legislature may establish the committees necessary for the efficient conduct of its business and the legislature may create joint committees. On all actions on bills and resolutions in each committee, names and votes of members shall be recorded. Such vote shall be available for public inspection. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal in advance of the hearing.

Sec. 18. Each house shall keep a journal of its proceedings, and publish the same unless the public security otherwise requires. The record of the vote and name of the members of either house voting on any question shall be entered in the journal at the request of one-fifth of the members present. Any member of either house may dissent from and protest against any act, proceeding or resolution which he deems injurious to any person or the public, and have the reason for his dissent entered in the journal.

Sec. 19. All elections in either house or in joint convention and all votes on appointments submitted to the senate for advice and consent shall be published by vote and name in the journal.

Sec. 20. The doors of each house shall be open unless the public security otherwise requires.

Sec. 21. Neither house shall, without the consent of the other, adjourn for more than two intervening calendar days, nor to any place other than where the legislature may then be in session.

Sec. 22. All legislation shall be by bill and may originate in either house.

Sec. 23. The style of the laws shall be: The People of the State of Michigan enact.

Sec. 24. No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

Sec. 25. No law shall be revised, altered or amended by reference to its title only. The section or sections of the act altered or amended shall be re-enacted and published at length.

Sec. 26. No bill shall be passed or become a law at any regular session of the legislature until it has been printed or reproduced and in the possession of each house for

at least five days. Every bill shall be read three times in each house before the final passage thereof. No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house. On the final passage of bills, the votes and names of the members voting thereon shall be entered in the journal.

Sec. 27. No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.

Sec. 28. When the legislature is convened on extraordinary occasions in special session no bill shall be passed on any subjects other than those expressly stated in the governor's proclamation or submitted by special message.

Sec. 29. The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. Any act repealing local or special acts shall require only a majority of the members elected to and serving in each house and shall not require submission to the electors of such district.

Sec. 30. The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

Sec. 32. Every law which imposes, continues or revives a tax shall distinctly state the tax.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

Sec. 34. Any bill passed by the legislature and approved by the governor, except a bill appropriating money, may provide that it will not become law unless approved by a majority of the electors voting thereon.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after final adjournment of the session, and shall be distributed in the manner provided by law. The prompt publication of judicial decisions shall be provided by law. All laws and judicial decisions shall be free for publication by any person.

Sec. 36. No general revision of the laws shall be made. The legislature may provide for a compilation of the laws in force, arranged without alteration, under appropriate heads and titles.

Sec. 37. The legislature may by concurrent resolution empower a joint committee of the legislature, acting between sessions, to suspend any rule or regulation promulgated by an administrative agency subsequent to the adjournment of the last preceding regular legislative session. Such suspension shall continue no longer than the end of the next regular legislative session.

Sec. 38. The legislature may provide by law the cases in which any office shall be vacant and the manner of filling vacancies where no provision is made in this constitution.

Sec. 39. In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state caused by enemy attack on the United States, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations. Notwithstanding the power conferred by this section, elections shall always be called as soon as possible to fill any vacancies in elective offices temporarily occupied by operation of any legislation enacted pursuant to the provisions of this section.

Sec. 40. The legislature may by law establish a liquor control commission which, subject to statutory limitations, shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof. The legislature may provide for an excise tax on such sales. Neither the legislature nor the commission may authorize the manufacture or sale of alcoholic beverages in any county in which a majority of the electors voting thereon shall prohibit the same.

Sec. 41. The legislature shall not authorize any lottery nor permit the sale of lottery tickets.

Sec. 42. The legislature may provide for the incorporation of ports and port districts, and confer power and authority upon them to engage in work of internal improvements in connection therewith.

Sec. 43. No general law providing for the incorporation of trust companies or corporations for banking purposes, or regulating the business thereof, shall be enacted, amended or repealed except by a vote of two-thirds of the members elected to and serving in each house.

Sec. 44. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.

Sec. 45. The legislature may provide for indeterminate sentences as punishment for crime and for the detention and release of persons imprisoned or detained under such sentences.

Sec. 46. No law shall be enacted providing for the penalty of death.

Sec. 47. The legislature may authorize the employment of chaplains in state institutions of detention or confinement.

Sec. 48. The legislature may enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service.

Sec. 49. The legislature may enact laws relative to the hours and conditions of employment.

Sec. 50. The legislature may provide safety measures and regulate the use of atomic energy and forms of energy developed in the future, having in view the general welfare of the people of this state.

Sec. 51. The public health and general welfare of the people of the state are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health.

Sec. 52. The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Sec. 53. The legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be a certified public accountant licensed to practice in this state, to serve for a term of eight years. He shall be ineligible for appointment or election to any other public office in this state from which compensation is derived while serving as auditor general and for two years following the termination of his service. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house. The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general upon direction by the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. He shall be assigned no duties other than those specified in this section.

Nothing in this section shall be construed in any way to infringe the responsibility and constitutional authority of the governing boards of the institutions of higher education to be solely responsible for the control and direction of all expenditures from the institutions' funds.

The auditor general, his deputy and one other member of his staff shall be exempt from classified civil service. All other members of his staff shall have classified civil service status.

ARTICLE V
Executive Branch

Sec. 1. The executive power is vested in the governor.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and

duties, except for the office of governor and lieutenant governor and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

Sec. 3. The head of each principal department shall be a single executive unless otherwise provided in this constitution or by law. The single executives heading principal departments shall include a secretary of state, a state treasurer and an attorney general. When a single executive is the head of a principal department, unless elected or appointed as otherwise provided in this constitution, he shall be appointed by the governor by and with the advice and consent of the senate and he shall serve at the pleasure of the governor.

When a board or commission is at the head of a principal department, unless elected or appointed as otherwise provided in this constitution, the members thereof shall be appointed by the governor by and with the advice and consent of the senate. The term of office and procedure for removal of such members shall be as prescribed in this constitution or by law.

Terms of office of any board or commission created or enlarged after the effective date of this constitution shall not exceed four years except as otherwise authorized in this constitution. The terms of office of existing boards and commissions which are longer than four years shall not be further extended except as provided in this constitution.

Sec. 4. Temporary commissions or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department.

Sec. 5. A majority of the members of an appointed examining or licensing board of a profession shall be members of that profession.

Sec. 6. Appointment by and with the advice and consent of the senate when used in this constitution or laws in effect or hereafter enacted means appointment subject to disapproval by a majority vote of the members elected to and serving in the senate if such action is taken within 60 session days after the date of such appointment. Any appointment not disapproved within such period shall stand confirmed.

Sec. 7. Vacancies in any office, appointment to which requires advice and consent of the senate, shall be filled by the governor by and with the advice and consent of the senate. A person whose appointment has been disapproved by the senate shall not be eligible for an interim appointment to the same office.

Sec. 8. Each principal department shall be under the supervision of the governor unless otherwise provided by this constitution. The governor shall take care that the laws be faithfully executed. He shall transact all necessary business with the officers of

government and may require information in writing from all executive and administrative state officers, elective and appointive, upon any subject relating to the duties of their respective offices.

The governor may initiate court proceedings in the name of the state to enforce compliance with any constitutional or legislative mandate, or to restrain violations of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its political subdivisions. This authority shall not be construed to authorize court proceedings against the legislature.

Sec. 9. Single executives heading principal departments and the chief executive officers of principal departments headed by boards or commissions shall keep their offices at the seat of government except as otherwise provided by law, superintend them in person and perform duties prescribed by law.

Sec. 10. The governor shall have power and it shall be his duty to inquire into the condition and administration of any public office and the acts of any public officer, elective or appointive. He may remove or suspend from office for gross neglect of duty or for corrupt conduct in office, or for any other misfeasance or malfeasance therein, any elective or appointive state officer, except legislative or judicial, and shall report the reasons for such removal or suspension to the legislature.

Sec. 11. The governor may make a provisional appointment to fill a vacancy occasioned by the suspension of an appointed or elected officer, other than a legislative or judicial officer, until he is reinstated or until the vacancy is filled in the manner prescribed by law or this constitution.

Sec. 12. The governor shall be commander-in-chief of the armed forces and may call them out to execute the laws, suppress insurrection and repel invasion.

Sec. 13. The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law.

Sec. 14. The governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as he may direct, subject to procedures and regulations prescribed by law. He shall inform the legislature annually of each reprieve, commutation and pardon granted, stating reasons therefor.

Sec. 15. The governor may convene the legislature on extraordinary occasions.

Sec. 16. The governor may convene the legislature at some other place when the seat of government becomes dangerous from any cause.

Sec. 17. The governor shall communicate by message to the legislature at the beginning of each session and may at other times present to the legislature information as to the affairs of the state and recommend measures he considers necessary or desirable.

Sec. 18. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit bills to meet deficiencies in current appropriations.

Sec. 19. The governor may disapprove any distinct item or items appropriating moneys in any appropriation bill. The part or parts approved shall become law, and the item or items disapproved shall be void unless re-passed according to the method prescribed for the passage of other bills over the executive veto.

Sec. 20. No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

Sec. 21. The governor, lieutenant governor, secretary of state and attorney general shall be elected for four-year terms at the general election in each alternate even-numbered year.

The lieutenant governor, secretary of state and attorney general shall be nominated by party conventions in a manner prescribed by law. In the general election one vote shall be cast jointly for the candidates for governor and lieutenant governor nominated by the same party.

Vacancies in the office of the secretary of state and attorney general shall be filled by appointment by the governor.

Sec. 22. To be eligible for the office of governor or lieutenant governor a person must have attained the age of 30 years, and have been a registered elector in this state for four years next preceding his election.

Sec. 23. The governor, lieutenant governor, secretary of state and attorney general shall each receive the compensation provided by law in full payment for all services performed and expenses incurred during his term of office. Such compensation shall not be changed during the term of office except as otherwise provided in this constitution.

Sec. 24. An executive residence suitably furnished shall be provided at the seat of government for the use of the governor. He shall receive an allowance for its maintenance as provided by law.

Sec. 25. The lieutenant governor shall be president of the senate, but shall have no vote, unless they be equally divided. He may perform duties requested of him by the governor, but no power vested in the governor shall be delegated.

Sec. 26. In case of the conviction of the governor on impeachment, his removal from office, his resignation or his death, the lieutenant governor, the elected secretary of state, the elected attorney general and such other persons designated by law shall in that order be governor for the remainder of the governor's term.

In case of the death of the governor-elect, the lieutenant governor-elect, the secretary of state-elect, the attorney general-elect and such other persons designated by law shall become governor in that order at the commencement of the governor-elect's term.

If the governor or the person in line of succession to serve as governor is absent from the state, or suffering under an inability, the powers and duties of the office of governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases.

The inability of the governor or person acting as governor shall be determined by a majority of the supreme court on joint request of the president pro tempore of the senate and the speaker of the house of representatives. Such determination shall be final

and conclusive. The supreme court shall upon its own initiative determine if and when the inability ceases.

Sec. 27. The legislature shall provide that the salary of any state officer while acting as governor shall be equal to that of the governor.

Sec. 28. There is hereby established a state highway commission, which shall administer the state highway department and have jurisdiction and control over all state trunkline highways and appurtenant facilities, and such other public works of the state, as provided by law.

The state highway commission shall consist of four members, not more than two of whom shall be members of the same political party. They shall be appointed by the governor by and with the advice and consent of the senate for four-year terms, no two of which shall expire in the same year, as provided by law.

The state highway commission shall appoint and may remove a state highway director, who shall be a competent highway engineer and administrator. He shall be the principal executive officer of the state highway department and shall be responsible for executing the policy of the state highway commission.

Sec. 29. There is hereby established a civil rights commission which shall consist of eight persons, not more than four of whom shall be members of the same political party, who shall be appointed by the governor, by and with the advice and consent of the senate, for four-year terms not more than two of which shall expire in the same year. It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person because of religion, race, color or national origin in the enjoyment of the civil rights guaranteed by law and by this constitution, and to secure the equal protection of such civil rights without such discrimination. The legislature shall provide an annual appropriation for the effective operation of the commission.

The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures, to hold hearings, administer oaths, through court authorization to require the attendance of witnesses and the submission of records, to take testimony, and to issue appropriate orders. The commission shall have other powers provided by law to carry out its purposes. Nothing contained in this section shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

Appeals from final orders of the commission, including cease and desist orders and refusals to issue complaints, shall be tried de novo before the circuit court having jurisdiction provided by law.

ARTICLE VI

Judicial Branch

Sec. 1. The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

Sec. 2. The supreme court shall consist of seven justices elected at non-partisan elections as provided by law. The term of office shall be eight years and not more than

two terms of office shall expire at the same time. Nominations for justices of the supreme court shall be in the manner prescribed by law. Any incumbent justice whose term is to expire may become a candidate for re-election by filing an affidavit of candidacy, in the form and manner prescribed by law, not less than 180 days prior to the expiration of his term.

Sec. 3. One justice of the supreme court shall be selected by the court as its chief justice as provided by rules of the court. He shall perform duties required by the court. The supreme court shall appoint an administrator of the courts and other assistants of the supreme court as may be necessary to aid in the administration of the courts of this state. The administrator shall perform administrative duties assigned by the court.

Sec. 4. The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Sec. 5. The supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state. The distinctions between law and equity proceedings shall, as far as practicable, be abolished. The office of master in chancery is prohibited.

Sec. 6. Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the facts and reasons for each decision and reasons for each denial of leave to appeal. When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.

Sec. 7. The supreme court may appoint, may remove, and shall have general supervision of its staff. It shall have control of the preparation of its budget recommendations and the expenditure of moneys appropriated for any purpose pertaining to the operation of the court or the performance of activities of its staff except that the salaries of the justices shall be established by law. All fees and perquisites collected by the court staff shall be turned over to the state treasury and credited to the general fund.

Sec. 8. The court of appeals shall consist initially of nine judges who shall be nominated and elected at non-partisan elections from districts drawn on county lines and as nearly as possible of equal population, as provided by law. The supreme court may prescribe by rule that the court of appeals sit in divisions and for the terms of court and the times and places thereof. Each such division shall consist of not fewer than three judges. The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be changed by law.

Sec. 9. Judges of the court of appeals shall hold office for a term of six years and until their successors are elected and qualified. The terms of office for the judges in each district shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 10. The jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be prescribed by rules of the supreme court.

Sec. 11. The state shall be divided into judicial circuits along county lines in each of which there shall be elected one or more circuit judges as provided by law. Sessions of the circuit court shall be held at least four times in each year in every county organized for judicial purposes. Each circuit judge shall hold court in the county or

counties within the circuit in which he is elected, and in other circuits as may be provided by rules of the supreme court. The number of judges may be changed and circuits may be created, altered and discontinued by law and the number of judges shall be changed and circuits shall be created, altered and discontinued on recommendation of the supreme court to reflect changes in judicial activity. No change in the number of judges or alteration or discontinuance of a circuit shall have the effect of removing a judge from office during his term.

Sec. 12. Circuit judges shall be nominated and elected at non-partisan elections in the circuit in which they reside, and shall hold office for a term of six years and until their successors are elected and qualified. In circuits having more than one circuit judge their terms of office shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 13. The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court.

Sec. 14. The clerk of each county organized for judicial purposes or other officer performing the duties of such office as provided in a county charter shall be clerk of the circuit court for such county. The judges of the circuit court may fill a vacancy in an elective office of county clerk or prosecuting attorney within their respective jurisdictions.

Sec. 15. In each county organized for judicial purposes there shall be a probate court. The legislature may create or alter probate court districts of more than one county if approved in each affected county by a majority of the electors voting on the question. The legislature may provide for the combination of the office of probate judge with any judicial office of limited jurisdiction within a county with supplemental salary as provided by law. The jurisdiction, powers and duties of the probate court and of the judges thereof shall be provided by law. They shall have original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.

Sec. 16. One or more judges of probate as provided by law shall be nominated and elected at non-partisan elections in the counties or the probate districts in which they reside and shall hold office for terms of six years and until their successors are elected and qualified. In counties or districts with more than one judge the terms of office shall be arranged by law to provide that not all terms will expire at the same time.

Sec. 17. No judge or justice of any court of this state shall be paid from the fees of his office nor shall the amount of his salary be measured by fees, other moneys received or the amount of judicial activity of his office.

Sec. 18. Salaries of justices of the supreme court, of the judges of the court of appeals, of the circuit judges within a circuit, and of the probate judges within a county or district, shall be uniform, and may be increased but shall not be decreased during a term of office except and only to the extent of a general salary reduction in all other branches of government.

Each of the judges of the circuit court shall receive an annual salary as provided by law. In addition to the salary received from the state, each circuit judge may receive from any county in which he regularly holds court an additional salary as determined

from time to time by the board of supervisors of the county. In any county where an additional salary is granted, it shall be paid at the same rate to all circuit judges regularly holding court therein.

Sec. 19. The supreme court, the court of appeals, the circuit court, the probate court and other courts designated as such by the legislature shall be courts of record and each shall have a common seal. Justices and judges of courts of record must be persons who are licensed to practice law in this state. No person shall be elected or appointed to a judicial office after reaching the age of 70 years.

Sec. 20. Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected, he shall have vacated his office.

Sec. 21. Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter.

Sec. 22. Any elected judge of the court of appeals, circuit court or probate court may become a candidate in the primary election for the office of which he is the incumbent by filing an affidavit of candidacy in the form and manner prescribed by law.

Sec. 23. A vacancy in the elective office of a judge of any court of record shall be filled at a general or special election as provided by law. The supreme court may authorize persons who have served as judges and who have retired, to perform judicial duties for the limited period of time from the occurrence of the vacancy until the successor is elected and qualified. Such persons shall be ineligible for election to fill the vacancy.

Sec. 24. There shall be printed upon the ballot under the name of each elected incumbent justice or judge who is a candidate for nomination or election to the same office the designation of that office.

Sec. 25. For reasonable cause, which is not sufficient ground for impeachment, the governor shall remove any judge on a concurrent resolution of two-thirds of the members elected to and serving in each house of the legislature. The cause for removal shall be stated at length in the resolution.

Sec. 26. The offices of circuit court commissioner and justice of the peace are abolished at the expiration of five years from the date this constitution becomes effective or may within this period be abolished by law. Their jurisdiction, compensation and powers within this period shall be as provided by law. Within this five-year period, the legislature shall establish a court or courts of limited jurisdiction with powers and jurisdiction defined by law. The location of such court or courts, and the qualifications, tenure, method of election and salary of the judges of such court or courts, and by what governmental units the judges shall be paid, shall be provided by law, subject to the limitations contained in this article.

Statutory courts in existence at the time this constitution becomes effective shall retain their powers and jurisdiction, except as provided by law, until they are abolished by law.

Sec. 27. The supreme court, the court of appeals, the circuit court, or any justices or judges thereof, shall not exercise any power of appointment to public office except as provided in this constitution.

Sec. 28. All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as

provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.

Sec. 29. Justices of the supreme court, judges of the court of appeals, circuit judges and other judges as provided by law shall be conservators of the peace within their respective jurisdictions.

ARTICLE VII

Local Government

Sec. 1. Each organized county shall be a body corporate with powers and immunities provided by law.

Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

Sec. 3. No organized county shall be reduced by the organization of new counties to less than 16 townships as surveyed by the United States, unless approved in the manner prescribed by law by a majority of electors voting thereon in each county to be affected.

Sec. 4. There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law. The board of supervisors in any county may combine the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. 5. The sheriff, county clerk, county treasurer and register of deeds shall hold their principal offices at the county seat.

Sec. 6. The sheriff may be required by law to renew his security periodically and in default of giving such security, his office shall be vacant. The county shall never be responsible for his acts, except that the board of supervisors may protect him against

claims by prisoners for unintentional injuries received while in his custody. He shall not hold any other office except in civil defense.

Sec. 7. A board of supervisors shall be established in each organized county consisting of one member from each organized township and such representation from cities as provided by law.

Sec. 8. Boards of supervisors shall have legislative, administrative and such other powers and duties as provided by law.

Sec. 9. Boards of supervisors shall have exclusive power to fix the compensation of county officers not otherwise provided by law.

Sec. 10. A county seat once established shall not be removed until the place to which it is proposed to be moved shall be designated by two-thirds of the members of the board of supervisors and a majority of the electors voting thereon shall have approved the proposed location in the manner prescribed by law.

Sec. 11. No county shall incur any indebtedness which shall increase its total debt beyond 10 percent of its assessed valuation.

Sec. 12. A navigable stream shall not be bridged or dammed without permission granted by the board of supervisors of the county as provided by law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interests of the county and political subdivisions therein.

Sec. 13. Two or more contiguous counties may combine into a single county if approved in each affected county by a majority of the electors voting on the question.

Sec. 14. The board of supervisors of each organized county may organize and consolidate townships under restrictions and limitations provided by law.

Sec. 15. Any county, when authorized by its board of supervisors shall have the authority to enter or to intervene in any action or certificate proceeding involving the services, charges or rates of any privately owned public utility furnishing services or commodities to rate payers within the county.

Sec. 16. The legislature may provide for the laying out, construction, improvement and maintenance of highways, bridges, culverts and airports by the state and by the counties and townships thereof; and may authorize counties to take charge and control of any highway within their limits for such purposes. The legislature may provide the powers and duties of counties in relation to highways, bridges, culverts and airports; may provide for county road commissioners to be appointed or elected, with powers and duties provided by law. The ad valorem property tax imposed for road purposes by any county shall not exceed in any year one-half of one percent of the assessed valuation for the preceding year.

Sec. 17. Each organized township shall be a body corporate with powers and immunities provided by law.

Sec. 18. In each organized township there shall be elected for terms of not less than two nor more than four years as prescribed by law a supervisor, a clerk, a treasurer, and not to exceed four trustees, whose legislative and administrative powers and duties shall be provided by law.

Sec. 19. No organized township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless the proposition shall first have been approved by a majority of the electors of such township voting thereon at a regular or special election.

Sec. 20. The legislature shall provide by law for the dissolution of township government whenever all the territory of an organized township is included within the boundaries of a village or villages notwithstanding that a village may include territory within another organized township and provide by law for the classification of such village or villages as cities.

Sec. 21. The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

Sec. 23. Any city or village may acquire, own, establish and maintain, within or without its corporate limits, parks, boulevards, cemeteries, hospitals and all works which involve the public health or safety.

Sec. 24. Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facilities for supplying water, light, heat, power, sewage disposal and transportation to the municipality and the inhabitants thereof.

Any city or village may sell and deliver heat, power or light without its corporate limits in an amount not exceeding 25 percent of that furnished by it within the corporate limits, except as greater amounts may be permitted by law; may sell and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body of the city or village; and may operate transportation lines outside the municipality within such limits as may be prescribed by law.

Sec. 25. No city or village shall acquire any public utility furnishing light, heat or power, or grant any public utility franchise which is not subject to revocation at the will of the city or village, unless the proposition shall first have been approved by three-fifths of the electors voting thereon. No city or village may sell any public utility unless the proposition shall first have been approved by a majority of the electors voting thereon, or a greater number if the charter shall so provide.

Sec. 26. Except as otherwise provided in this constitution, no city or village shall have the power to loan its credit for any private purpose or, except as provided by law, for any public purpose.

Sec. 27. Notwithstanding any other provision of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. Wherever possible, such additional forms of government or authorities shall be designed to perform multi-purpose functions rather than a single function.

Sec. 28. The legislature by general law shall authorize two or more counties, townships, cities, villages or districts, or any combination thereof among other things to:

enter into contractual undertakings or agreements with one another or with the state or with any combination thereof for the joint administration of any of the functions or powers which each would have the power to perform separately; share the costs and responsibilities of functions and services with one another or with the state or with any combination thereof which each would have the power to perform separately; transfer functions or responsibilities to one another or any combination thereof upon the consent of each unit involved; cooperate with one another and with state government; lend their credit to one another or any combination thereof as provided by law in connection with any authorized publicly owned undertaking.

Any other provision of this constitution notwithstanding, an officer or employee of the state or any such unit of government or subdivision or agency thereof, except members of the legislature, may serve on or with any governmental body established for the purposes set forth in this section and shall not be required to relinquish his office or employment by reason of such service.

Sec. 29. No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.

Sec. 30. No franchise or license shall be granted by any township, city or village for a period longer than 30 years.

Sec. 31. The legislature shall not vacate or alter any road, street, alley or public place under the jurisdiction of any county, township, city or village.

Sec. 32. Any county, township, city, village, authority or school district empowered by the legislature or by this constitution to prepare budgets of estimated expenditures and revenues shall adopt such budgets only after a public hearing in a manner prescribed by law.

Sec. 33. Any elected officer of a political subdivision may be removed from office in the manner and for the causes provided by law.

Sec. 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

ARTICLE VIII

Education

Sec. 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

Sec. 3. Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Sec. 4. The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public.

Sec. 5. The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Sec. 6. Other institutions of higher education established by law having authority to grant baccalaureate degrees shall each be governed by a board of control which shall be a body corporate. The board shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds. It shall, as often as necessary, elect a president of the institution under its supervision.

He shall be the principal executive officer of the institution and be ex-officio a member of the board without the right to vote. The board may elect one of its members or may designate the president, to preside at board meetings. Each board of control shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the governor by and with the advice and consent of the senate. Vacancies shall be filled in like manner.

Sec. 7. The legislature shall provide by law for the establishment and financial support of public community and junior colleges which shall be supervised and controlled by locally elected boards. The legislature shall provide by law for a state board for public community and junior colleges which shall advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support. The board shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the state board of education. Vacancies shall be filled in like manner. The superintendent of public instruction shall be ex-officio a member of this board without the right to vote.

Sec. 8. Institutions, programs and services for the care, treatment, education or rehabilitation of those inhabitants who are physically, mentally or otherwise seriously handicapped shall always be fostered and supported.

Sec. 9. The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.

ARTICLE IX

Finance and Taxation

Sec. 1. The legislature shall impose taxes sufficient with other resources to pay the expenses of state government.

Sec. 2. The power of taxation shall never be surrendered, suspended or contracted away.

Sec. 3. The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

Sec. 4. Property owned and occupied by non-profit religious or educational organizations and used exclusively for religious or educational purposes, as defined by law, shall be exempt from real and personal property taxes.

Sec. 5. The legislature shall provide for the assessment by the state of the property of those public service businesses assessed by the state at the date this constitution becomes effective, and of other property as designated by the legislature,

and for the imposition and collection of taxes thereon. Property assessed by the state shall be assessed at the same proportion of its true cash value as the legislature shall specify for property subject to general ad valorem taxation. The rate of taxation on such property shall be the average rate levied upon other property in this state under the general ad valorem tax law, or, if the legislature provides, the rate of tax applicable to the property of each business enterprise assessed by the state shall be the average rate of ad valorem taxation levied upon other property in all counties in which any of such property is situated.

Sec. 6. Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. Under procedures provided by law, which shall guarantee the right of initiative, separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills on each dollar of such valuation, may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county voting thereon, in lieu of the limitation hereinbefore established. These limitations may be increased to an aggregate of not to exceed 50 mills on each dollar of valuation, for a period of not to exceed 20 years at any one time, if approved by a majority of the electors, qualified under Section 6 of Article II of this constitution, voting on the question.

The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; or to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district.

Sec. 7. No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions.

Sec. 8. The legislature shall not impose a sales tax on retailers at a rate of more than four percent of their gross taxable sales of tangible personal property.

Sec. 9. All specific taxes, except general sales and use taxes and regulatory fees, imposed directly or indirectly on fuels sold or used to propel motor vehicles upon highways and on registered motor vehicles shall, after the payment of necessary collection expenses, be used exclusively for highway purposes as defined by law.

Sec. 10. One-eighth of all taxes imposed on retailers on taxable sales at retail of tangible personal property shall be used exclusively for assistance to townships, cities and villages, on a population basis as provided by law. In determining population the legislature may exclude any portion of the total number of persons who are wards, patients or convicts in any tax supported institution.

Sec. 11. There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education and school employees' retirement systems, as provided by law. One-half of all taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall

be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law.

Sec. 12. No evidence of state indebtedness shall be issued except for debts authorized pursuant to this constitution.

Sec. 13. Public bodies corporate shall have power to borrow money and to issue their securities evidencing debt, subject to this constitution and law.

Sec. 14. To meet obligations incurred pursuant to appropriations for any fiscal year, the legislature may by law authorize the state to issue its full faith and credit notes in which case it shall pledge undedicated revenues to be received within the same fiscal year for the repayment thereof. Such indebtedness in any fiscal year shall not exceed 15 percent of undedicated revenues received by the state during the preceding fiscal year and such debts shall be repaid at the time the revenues so pledged are received, but not later than the end of the same fiscal year.

Sec. 15. The state may borrow money for specific purposes in amounts as may be provided by acts of the legislature adopted by a vote of two-thirds of the members elected to and serving in each house, and approved by a majority of the electors voting thereon at any general election. The question submitted to the electors shall state the amount to be borrowed, the specific purpose to which the funds shall be devoted, and the method of repayment.

Sec. 16. The state, in addition to any other borrowing power, may borrow from time to time such amounts as shall be required, pledge its faith and credit and issue its notes or bonds therefor, for the purpose of making loans to school districts as provided in this section.

If the minimum amount which would otherwise be necessary for a school district to levy in any year to pay principal and interest on its qualified bonds, including any necessary allowances for estimated tax delinquencies, exceeds 13 mills on each dollar of its assessed valuation as finally equalized, or such lower millage as the legislature may prescribe, then the school district may elect to borrow all or any part of the excess from the state. In that event the state shall lend the excess amount to the school district for the payment of principal and interest. If for any reason any school district will be or is unable to pay the principal and interest on its qualified bonds when due, then the school district shall borrow and the state shall lend to it an amount sufficient to enable the school district to make the payment.

The term "qualified bonds" means general obligation bonds of school districts issued for capital expenditures, including refunding bonds, issued prior to May 4, 1955, or issued thereafter and qualified as provided by law pursuant to Section 27 or Section 28 of Article X of the Constitution of 1908 or pursuant to this section.

After a school district has received loans from the state, each year thereafter it shall levy for debt service, exclusive of levies for nonqualified bonds, not less than 13 mills or such lower millage as the legislature may prescribe, until the amount loaned has been repaid, and any tax collections therefrom in any year over and above the minimum requirements for principal and interest on qualified bonds shall be used toward the repayment of state loans. In any year when such levy would produce an amount in excess of the requirements and the amount due to the state, the levy may be reduced by the amount of the excess.

Subject to the foregoing provisions, the legislature shall have the power to prescribe and to limit the procedure, terms and conditions for the qualification of bonds, for obtaining and making state loans, and for the repayment of loans.

The power to tax for the payment of principal and interest on bonds hereafter issued which are the general obligations of any school district, including refunding bonds, and for repayment of any state loans made to school districts, shall be without limitation as to rate or amount.

All rights acquired under Sections 27 and 28 of Article X of the Constitution of 1908, by holders of bonds heretofore issued, and all obligations assumed by the state or any school district under these sections, shall remain unimpaired.

Sec. 17. No money shall be paid out of the state treasury except in pursuance of appropriations made by law.

Sec. 18. The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.

This section shall not be construed to prohibit the investment of public funds until needed for current requirements or the investment of funds accumulated to provide retirement or pension benefits for public officials and employees, as provided by law.

Sec. 19. The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; and endowment funds created for charitable or educational purposes may be invested as provided by law governing the investment of funds held in trust by trustees.

Sec. 20. No state money shall be deposited in banks other than those organized under the national or state banking laws. No state money shall be deposited in any bank in excess of 50 percent of the capital and surplus of such bank. Any bank receiving deposits of state money shall show the amount of state money so deposited as a separate item in all published statements.

Sec. 21. The legislature shall provide by law for the annual accounting for all public moneys, state and local, and may provide by law for interim accounting.

The legislature shall provide by law for the maintenance of uniform accounting systems by units of local government and the auditing of county accounts by competent state authority and other units of government as provided by law.

Sec. 22. Procedures for the examination and adjustment of claims against the state shall be prescribed by law.

Sec. 23. All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be published and distributed annually, as provided by law.

Sec. 24. The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

ARTICLE X
Property

Sec. 1. The disabilities of coverture as to property are abolished. The real and personal estate of every woman acquired before marriage and all real and personal

property to which she may afterwards become entitled shall be and remain the estate and property of such woman, and shall not be liable for the debts, obligations or engagements of her husband, and may be dealt with and disposed of by her as if she were unmarried. Dower may be relinquished or conveyed as provided by law.

Sec. 2. Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.

Sec. 3. A homestead in the amount of not less than $3,500 and personal property of every resident of this state in the amount of not less than $750, as defined by law, shall be exempt from forced sale on execution or other process of any court. Such exemptions shall not extend to any lien thereon excluded from exemption by law.

Sec. 4. Procedures relating to escheats and to the custody and disposition of escheated property shall be prescribed by law.

Sec. 5. The legislature shall have general supervisory jurisdiction over all state owned lands useful for forest preserves, game areas and recreational purposes; shall require annual reports as to such lands from all departments having supervision or control thereof; and shall by general law provide for the sale, lease or other disposition of such lands.

The legislature by an act adopted by two-thirds of the members elected to and serving in each house may designate any part of such lands as a state land reserve. No lands in the state land reserve may be removed from the reserve, sold, leased or otherwise disposed of except by an act of the legislature.

Sec. 6. Aliens who are residents of this state shall enjoy the same rights and privileges in property as citizens of this state.

ARTICLE XI

Public Officers and Employment

Sec. 1. All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.

Sec. 2. The terms of office of elective state officers, members of the legislature and justices and judges of courts of record shall begin at twelve o'clock noon on the first day of January next succeeding their election, except as otherwise provided in this constitution. The terms of office of county officers shall begin on the first day of January next succeeding their election, except as otherwise provided by law.

Sec. 3. Neither the legislature nor any political subdivision of this state shall grant or authorize extra compensation to any public officer, agent or contractor after the service has been rendered or the contract entered into.

Sec. 4. No person having custody or control of public moneys shall be a member of the legislature, or be eligible to any office of trust or profit under this state, until he shall have made an accounting, as provided by law, of all sums for which he may be liable.

Sec. 5. The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department.

The civil service commission shall be non-salaried and shall consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for terms of eight years, no two of which shall expire in the same year.

The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the classified service and who shall be responsible to and selected by the commission after open competitive examination.

The commission shall classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.

No person shall be appointed to or promoted in the classified service who has not been certified by the commission as qualified for such appointment or promotion. No appointments, promotions, demotions or removals in the classified service shall be made for religious, racial or partisan considerations.

Increases in rates of compensation authorized by the commission may be effective only at the start of a fiscal year and shall require prior notice to the governor, who shall transmit such increases to the legislature as part of his budget. The legislature may, by a majority vote of the members elected to and serving in each house, waive the notice and permit increases in rates of compensation to be effective at a time other than the start of a fiscal year. Within 60 calendar days following such transmission, the legislature may, by a two-thirds vote of the members elected to and serving in each house, reject or reduce increases in rates of compensation authorized by the commission. Any reduction ordered by the legislature shall apply uniformly to all classes of employees affected by the increases and shall not adjust pay differentials already established by the civil service commission. The legislature may not reduce rates of compensation below those in effect at the time of the transmission of increases authorized by the commission.

The appointing authorities may create or abolish positions for reasons of administrative efficiency without the approval of the commission. Positions shall not be created nor abolished except for reasons of administrative efficiency. Any employee considering himself aggrieved by the abolition or creation of a position shall have a right of appeal to the commission through established grievance procedures.

The civil service commission shall recommend to the governor and to the legislature rates of compensation for all appointed positions within the executive department not a part of the classified service.

To enable the commission to exercise its powers, the legislature shall appropriate to the commission for the ensuing fiscal year a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year, as certified by the commission. Within six months after the conclusion of each fiscal year the commission shall return to the state treasury all moneys unexpended for that fiscal year.

The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law.

No payment for personal services shall be made or authorized until the provisions of this constitution pertaining to civil service have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

Sec. 6. By ordinance or resolution of its governing body which shall not take effect until approved by a majority of the electors voting thereon, unless otherwise provided by charter, each county, township, city, village, school district and other governmental unit or authority may establish, modify or discontinue a merit system for its employees other than teachers under contract or tenure. The state civil service commission may on request furnish technical services to any such unit on a reimbursable basis.

Sec. 7. The house of representatives shall have the sole power of impeaching civil officers for corrupt conduct in office or for crimes or misdemeanors, but a majority of the members elected thereto and serving therein shall be necessary to direct an impeachment.

When an impeachment is directed, the house of representatives shall elect three of its members to prosecute the impeachment.

Every impeachment shall be tried by the senate immediately after the final adjournment of the legislature. The senators shall take an oath or affirmation truly and impartially to try and determine the impeachment according to the evidence. When the governor or lieutenant governor is tried, the chief justice of the supreme court shall preside.

No person shall be convicted without the concurrence of two-thirds of the senators elected and serving. Judgment in case of conviction shall not extend further than removal from office, but the person convicted shall be liable to punishment according to law.

No judicial officer shall exercise any of the functions of his office after an impeachment is directed until he is acquitted.

ARTICLE XII

Amendment and Revision

Sec. 1. Amendments to this constitution may be proposed in the senate or house of representatives. Proposed amendments agreed to by two-thirds of the members elected to and serving in each house on a vote with the names and vote of those voting entered in the respective journals shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct. If a majority of electors voting on a proposed amendment approve the same, it shall become part of the constitution and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved.

Sec. 2. Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Sec. 3. At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. To fill a vacancy in the office of any delegate, the governor shall appoint a qualified resident of the same district who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of

the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

Schedule and Temporary Provisions

To insure the orderly transition from the constitution of 1908 to this constitution the following schedule and temporary provisions are set forth to be effective for such period as are thereby required.

Sec. 1. The attorney general shall recommend to the legislature as soon as practicable such changes as may be necessary to adapt existing laws to this constitution.

Sec. 2. All writs, actions, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, contracts, claims, demands, titles and rights existing on the effective date of this constitution shall continue unaffected except as modified in accordance with the provisions of this constitution.

Sec. 3. Except as otherwise provided in this constitution, all officers filling any office by election or appointment shall continue to exercise their powers and duties until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.

No provision of this constitution, or of law or of executive order authorized by this constitution shall shorten the term of any person elected to state office at a statewide election on or prior to the date on which this constitution is submitted to a vote. In the event the duties of any such officers shall not have been abolished or incorporated into one or more of the principal departments at the expiration of his term, such officer shall continue to serve until his duties are so incorporated or abolished.

Sec. 4. All officers elected at the same election that this constitution is submitted to the people for adoption shall take office and complete the term to which they were elected under the 1908 constitution and existing laws and continue to serve until their successors are elected and qualified pursuant to this constitution or law.

Sec. 5. Notwithstanding any other provision in this constitution, the governor, the lieutenant governor, the secretary of state, the attorney general and state senators shall be elected at the general election in 1964 to serve for two-year terms beginning on the first day of January next succeeding their election. The first election of such officers for four-year terms under this constitution shall be held at the general election in 1966.

Sec. 6. Notwithstanding the provisions of this constitution that the supreme court shall consist of seven justices it shall consist of eight justices until the time that a vacancy occurs as a result of death, retirement or resignation of a justice. The first such vacancy shall not be filled.

Sec. 7. Any judge of probate serving on the effective date of this constitution may serve the remainder of the term and be eligible to succeed himself for election

regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

Sec. 8. The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office.

Sec. 9. The members of the state board of education provided for in Section 3 of Article VIII of this constitution shall first be elected at the first general election after the effective date of this constitution for the following terms: two shall be elected for two years, two for four years, two for six years, and two for eight years as prescribed by law.

The state board of education provided for in the constitution of 1908 is abolished at twelve o'clock noon January 1 of the year following the first general election under this constitution and the terms of members thereof shall then expire.

Sec. 10. The provisions of this constitution providing for members of boards of control of institutions of higher education and the state board of public community and junior colleges shall be implemented by law. The law may provide that the term of each member in office on the date of the vote on this constitution may be extended, and may further provide that the initial terms of office of members may be less than eight years.

Sec. 11. The provisions of this constitution increasing the number of members of the Board of Trustees of Michigan State University and of the Board of Governors of Wayne State University to eight, and of their term of office to eight years, shall be implemented by law. The law may provide that the term of each member in office on the date of the vote on this constitution may be extended one year, and may further provide that the initial terms of office of the additional members may be less than eight years.

Sec. 12. The initial allocation of departments by law pursuant to Section 2 of Article V of this constitution, shall be completed within two years after the effective date of this constitution. If such allocation shall not have been completed within such period, the governor, within one year thereafter, by executive order, shall make the initial allocation.

Sec. 13. Contractual obligations of the state incurred pursuant to the constitution of 1908 shall continue to be obligations of the state.

For the retirement of notes and bonds issued under Section 26 of Article X of the 1908 constitution, there is hereby appropriated from the general fund each year during their life a sum equal to the amount of principal and interest payments due and payable in each year.

Sec. 14. The legislature by a vote of two-thirds of the members elected to and serving in each house may provide that the state may borrow money and may pledge its full faith and credit for refunding any bonds issued by the Mackinac Bridge Authority and at the time of refunding the Mackinac Bridge Authority shall be abolished and the operation of the bridge shall be assumed by the state highway department. The legislature may implement this section by law.

Sec. 15. This constitution shall be submitted to the people for their adoption or rejection at the general election to be held on the first Monday in April, 1963. It shall be the duty of the secretary of state forthwith to give notice of such submission to all

other officers required to give or publish any notice in regard to a general election. He shall give notice that this constitution will be duly submitted to the electors at such election. The notice shall be given in the manner required for the election of governor.

Sec. 16. Every registered elector may vote on the adoption of the constitution. The board of election commissioners in each county shall cause to be printed on a ballot separate from the ballot containing the names of the nominees for office, the words: Shall the revised constitution be adopted? ( ) Yes. ( ) No. All votes cast at the election shall be taken, counted, canvassed and returned as provided by law for the election of state officers. If the revised constitution so submitted receives more votes in its favor than were cast against it, it shall be the supreme law of the state on and after the first day of January of the year following its adoption.

Adopted by the Constitutional Convention of nineteen hundred sixty-one at Constitution Hall in Lansing on the first day of August, nineteen hundred sixty-two.

Stephen S. Nisbet

Stephen S. Nisbet, *President*

Fred I. Chase

Fred I. Chase, *Secretary*

[ADDRESS TO THE PEOPLE]

What the Proposed New State Constitution Means to You

- **A report to the people of Michigan by their elected delegates to the Constitutional Convention of 1961-62.**

Lansing, Michigan

August 1, 1962

Schedule and Temporary Provisions

To insure the orderly transition from the constitution of 1908 to this constitution the following schedule and temporary provisions are set forth to be effective for such period as are thereby required.

Attorney General to recommend necessary laws.

Sec. 1. The attorney general ** shall *recommend* to the legislature *as soon as practicable* such changes as may be * necessary to adapt existing laws to this constitution.

This is a revision of Sec. 8 of the Schedule of the present constitution. It authorizes the attorney general to recommend to the legislature necessary changes in existing laws if the revised constitution is adopted.

Writs, actions, claims, etc., remain effective.

Sec. 2. All writs, actions, *suits, proceedings, civil or criminal liabilities,* prosecutions, *judgments, sentences, orders, decrees, appeals,* causes of action, *contracts, claims, demands, titles* and rights *existing on the effective date of this constitution shall continue unaffected except as modified in accordance with the provisions of this constitution.*

This is a revision of Sec. 2 of the Schedule of the present constitution. It specifies that existing writs, actions, claims, etc. remain effective if the revised constitution is adopted, except as modified in accordance with the provisions of the document.

Officers continue their duties.

Sec. 3. *Except as otherwise provided in this constitution,* all officers *filling* any office *by election* or appointment shall continue to *exercise their powers and duties until their offices shall have been abolished or their successors selected and qualified in accordance with this constitution or the laws enacted pursuant thereto.*

No provision of this constitution, or of law or of executive order authorized by this constitution shall shorten the term of any person elected to state office at a statewide election on or prior to the date on which this constitution is submitted to a vote. In the event the duties of any such officers shall not have been abolished or incorporated into one or more of the principal departments at the expiration of his term, such officer shall continue to serve until his duties are so incorporated or abolished.

This is a revision of Sec. 5 of the Schedule of the present constitution. It insures the tenure of present elective and appointive officers, under the conditions specified, if the revised constitution is adopted.

Terms of officers elected November, 1962.

Sec. 4. All officers elected at the same election that this constitution is submitted to the people for adoption shall take office and complete the term to which they were elected under the 1908 constitution

and existing laws and continue to serve until their successors are elected and qualified pursuant to this constitution or law.

This is a new section specifying that officers elected at the same election at which this revised constitution is submitted to the people shall take office and continue to serve until their successors are elected and qualified.

Terms of governor, etc. elected 1964; when four-year terms begin.

Sec. 5. Notwithstanding any other provision in this constitution, the governor, the lieutenant governor, the secretary of state, the attorney general and state senators shall be elected at the general election in 1964 to serve for two-year terms beginning on the first day of January next succeeding their election. The first election of such officers for four-year terms under this constitution shall be held at the general election in 1966.

This is a new section providing for transition from two-year to four-year terms for elected state officials and senators. It specifies that the first election of such officers for four-year terms will be held in November, 1966, thus separating gubernatorial from presidential elections.

Supreme court; reduction to seven justices.

Sec. 6. Notwithstanding the provisions of this constitution that the supreme court shall consist of seven justices it shall consist of eight justices until the time that a vacancy occurs as a result of death, retirement or resignation of a justice. The first such vacancy shall not be filled.

This is a new section providing that the present supreme court will continue to consist of eight justices if this revised constitution is adopted. A vacancy in the court due to death, retirement or resignation will not be filled, thus reducing the court to the seven members specified in the Judicial Article.

Judges of probate; eligible for reelection.

Sec. 7. Any judge of probate serving on the effective date of this constitution may serve the remainder of the term and be eligible to succeed himself for election regardless of other provisions in this constitution requiring him to be licensed to practice law in this state.

This is a new section providing that non-lawyer probate judges may continue to serve and be candidates for reelection to their posts if this revised constitution is adopted.

Overlapping terms for judiciary.

Sec. 8. The provisions of Article VI providing that terms of judicial offices shall not all expire at the same time, shall be implemented by law providing that at the next election for such offices judges shall be elected for terms of varying length, none of which shall be shorter than the regular term provided for the office.

This is a new section directing the legislature to design judicial election procedure to provide for the overlapping terms specified in the judicial article.