FIFTY-NINTH DAY

(LEGISLATIVE DAY OF WEDNESDAY)

MORNING SESSION.

THURSDAY, April 18, 1912.

The Convention met pursuant to recess, was called to order by the president and opened with prayer by the Rev. Carl S. Patton, of Columbus, Ohio.

Mr. LAMPSON: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant-at-arms will close the doors and the secretary will call the roll.

The roll was called when the following members failed to answer to their names:

Anderson,	Fess,	Mauck,
Bowdle,	Harris, Ashtabula,	Okey,
Brown, Highland,	Hoskins,	Price,
Cassidy,	Johnson, Madison,	Rorick,
Cod[illegible],	Kerr,	Shaffer,
Crites,	Leslie,	Stalter,
DeFrees,	Marriott,	Walker,
Dunlap,	Marshall,	Weybrecht,
Elson,	Matthews,	Worthington.

The president announced that ninety-two members had answered to their names.

Mr. CORDES: [During roll call]. The gentleman from Wyandot has a leave of absence—

Mr. DOTY: A point of order.

The PRESIDENT: The point of order is well taken.

Mr. LAMPSON: I move that all further proceedings under the call of the Convention be dispensed with.

The motion was carried.

The PRESIDENT: The president wishes to report a mistake in announcing the vote last night. The vote was forty-nine in favor of the motion to table and forty-eight against. So the report of the committee and the minority report are both tabled and the question is on engrossment.

Mr. LAMPSON: Engrossment of what?

The PRESIDENT: Engrossment of Proposal No. 291.

Mr. LAMPSON: I make the point of order that the proposal was included in the majority report which went to the table. The report is an entirety and it can not be separated. If the secretary will read the majority report he will find that the original proposal is named in the body of the report.

The secretary [reading]:

> Mr. Fackler submitted the following report: The standing committee on Initiative and Referendum, to which was referred Proposal No. 291 —Mr. Watson, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended.

Mr. LAMPSON: The report is back with the "following amendments." The report in its entirety is laid on the table and it takes with it all the papers which accompanied it. Under our rules all the papers referred to the committee when the report is made are reported back. Whatever they may be, they are part of the report. Our rules recognize as a distinct thing reports, proposals and amendments. Rule No. 57 reads as follows:

> The laying of an amendment upon the table, or its indefinite postponement, does not carry to the table the proposition sought to be amended.

But that rule distinctly refers to the laying of an amendment on the table. This is the laying of a report on the table, an entirely different thing, which under the rules is treated as a distinct thing, and whenever the report went to the table it carried with it all the papers connected with it, and in this particular case the proposal itself is named right in the body of the report and the report can not be separated.

Mr. DOTY: If the point of order were sustained, it would violate every principle upon which the rules of this Convention are builded. These rules under which we are operating are similar to the rules of the house of representatives of this state which have been in force for many years. They are built upon the theory that looks to the life of a measure. The whole tendency of the rule is to preserve the life of the proposal and not for its death. That is shown by our Rule No. 57, which makes it possible for this Convention to stop debate upon an amendment without touching the life of the main question. It resolves itself back to what is the main question now before this Convention? What was the main question when this report was made? When the committee reported back Proposal No. 291 with some amendments, the next step of that proposal under our rules was engrossment. That was the main question. I am speaking of the majority report, because the principle is the same no matter how many minority reports we have. The majority of the committee recommended what? That that proposal, which was before the Convention and which was a thing by itself, shall be passed, provided the amendments that the committee proposed are incorporated. Mark you, there are two things, the proposal itself, the next stage of which is engrossment, and the subsidiary proposition amending it first before it gets to a final vote on the main question. It is just exactly like we are doing here every day when we propose an amendment to a proposal. Sometimes we lay that amendment on the table. Here, instead of a member offering an amendment, the committee proposes an amendment, and by our action we laid that amendment on the table. That sort of motion under a proper and fair interpretation of Rule No. 57 lays the amendment itself on the table and does not go to the main proposition. There can be only one main proposition under any circumstances. At various stages of our process in getting these measures through, the main question is sometimes one thing and sometimes another.

Mr. DWYER: The motion to lay on the table embraced both. The motion was to lay the report and the amendments on the table.

Mr. DOTY: If that had been the motion I would be wrong, but I will read the record. I heard the motion made.

Mr. DWYER: I heard the motion made too, and it embraced the whole thing.

Mr. DOTY: The record reads: "Mr. Donahey moved that the majority report and the minority report be laid on the table." So there was nothnig said about the main proposition. The main proposition before the Convention was only one thing and that was engrossment.

Mr. LAMPSON: Will you allow me a suggestion?

Mr. DOTY: Yes.

Mr. LAMPSON: We hadn't reached the second stage and before we reached that we laid both reports on the table.

Mr. DOTY: We reached that stage right after the report had been read the second time.

Mr. LAMPSON: We had referred it to a committee—

Mr. DOTY: That is not a stage necessary to the life of any bill, as the member knows. We can introduce a proposal right now and not refer it to a committee and carry it to engrossment the next stage, but you cannot take it from first reading to second reading without engrossment.

Mr. KNIGHT: Under the gentleman's theory, where is the proposal?

Mr. DOTY: Before the Convention on the question of engrossment.

Mr. KNIGHT: How did it get there?

Mr. DOTY: By being returned to the house by the committee to which it was committed.

Mr. KNIGHT: Embodied in their report?

Mr. DOTY: The proposal is not embodied in their report. I defy anybody to show it. It is referred to in the report because necessarily the report must refer to something. But it is not embodied in the report, as the member from Franklin [Mr. KNIGHT] well knows.

Mr. LAMPSON: Suppose we grant what you say about where the proposal is now. When we recessed, according to your idea, it was suspended in the air above the table? Did it drop when we recessed?

Mr. DOTY: What happens when we recess when the member from Ashtabula has the floor? Does he drop on the floor or is he suspended in the air?

Mr. LAMPSON: I don't stand on the floor.

Mr. DOTY: No, you go to lunch, but you come back and demand your rights. We have been doing that so many times that I think even the member from Ashtabula [Mr. LAMPSON] understands that. When we recess whatever right a proposition has it retains.

Mr. LAMPSON: When before in this Convention upon presentation of a report and action upon it have we considered that the proposal was an independent report? At no time in the procedings of this Convention have we separated a proposal from our action on the report.

Mr. DOTY: We have done it every time we have acted. There is never a time that we don't act separately. The first thing we do when the report of a committee comes in is to act upon the report, which is what? To amend the bill before engrossment.

Mr. LAMPSON: To postpone a report carries with it the report and everything connected.

Mr. DOTY: Yes, the postponement of a whole proposition, as we did the other night, when the gentleman from Allen [Mr. HALFHILL] made a motion to postpone the whole thing, and the whole thing was postponed. It was not killed and it came up at the time to which it was postponed, at the same stage and in the same condition as when the gentleman asked to have it postponed.

Mr. LAMPSON: If it were not for Rule No. 57 would you contend—

Mr. DOTY: No, that is the whole thing—Rule No. 57.

Mr. LAMPSON: You admit that under general parliamentary law the proposal went with it?

Mr. DOTY: Yes; and just right there—that is what I said when I started in, that our rules looked to the life of a proposition rather than to its technical death. That is the very reason we have Rule No. 57 in our rules.

Mr. LAMPSON: Laying the proposition upon the table does not necessarily kill it. We have rules for taking it from the table.

Mr. DOTY: I know, but it comes near killing it. For instance, there is just once a week that this Convention, by a majority vote, can take from the table any proposition that has been laid on the table. It takes a two-thirds vote any other time; that is, it takes a two-thirds vote for a suspension of the rules so that a motion to take the thing from the table can be made. Any time but Monday night it takes a two-thirds vote to get the privilege of making that motion.

Mr. LAMPSON: Do you not admit that a special rule taking some particular thing out from the operation of the general rule must be construed strictly?

Mr. DOTY: I say it must be construed in accordance with the thoughts of the majority of the Convention. If a majority of the Convention desires a strict construction and desires or upholds a point of order so as to produce a strict construction looking toward the death of this or any other proposition in the same predicament, that must be the rule of the Convention.

Mr. LAMPSON: Find in Rule No. 57 anything about laying reports on the table.

Mr. DOTY: Of course, the member is simply trying to make a distinction between a report that amends and a motion that amends. That is all the difference between the member and myself. I maintain that the fair and honorable and straight interpretation of Rule No. 57, looking to the life of the proposal by Mr. Watson, is the interpretation I am contending for, and there is no difference in the parliamentary effect between a committee recommending an amendment and a member recommending an amendment. The upholding of either motion amends the proposal and that is all there is to it. Therefore, if the committee has recommended an amendment and that amendment is laid upon the table, in all fairness we are in the same shape we would have been if the member from Ashtabula had proposed an amendment and it had been laid on the table.

Mr. LAMPSON: Were only the amendments laid on the table or were both the reports laid on the table?

Mr. DOTY: That is what the record shows. The report was in effect to amend. The report does not incorporate or embody the proposal itself, but just refers to it so that if it is adopted we know what proposal is adopted.

Mr. WINN: Suppose the minority report had been laid on the table—

Mr. DOTY: We would have come to a vote upon the majority report.

Mr. WINN: But if the gentleman from Ashtabula is right, why would not that carry the whole thing? The proposal is referred to there.

Mr. DOTY: You are right.

Mr. LAMPSON: If you had moved to lay the minority report upon the table that would have been the scope of the motion.

Mr. DOTY: That is what I contend for. The member from Ashtabula [Mr. LAMPSON] is right at last. If we had moved and carried a motion to lay the minority report on the table the majority report would have still been before us. Do you dispute that?

Mr. LAMPSON: No, but the motion included something else.

Mr. DOTY: We included something else. Now just use your imagination a while—

Mr. LAMPSON: I am not using imagination—

Mr. DOTY: I know you are not, you haven't any. As the gentleman from Defiance [Mr. WINN] put it, if a motion had been made to lay the minority report on the table and it had been carried where would we have been according to the ligitimate carrying out of your theory? It would have carried the whole thing.

Mr. LAMPSON: No, it would not.

Mr. HALFHILL: Does that take the original proposal as it went into the hands of the committee—is it the engrossment of the original proposal that is before the Convention?

Mr. DOTY: It is, in my judgment.

Mr. HALFHILL: Then the proposal recommended by the majority of the committee you treat as an amendment?

Mr. DOTY: That is on the table and the question is on the engrossment of the original proposal, and if that question is voted upon by a yea and nay vote and is voted down that is an end of it. It is engrossed, it goes on the calendar for a second reading.

Mr. THOMAS: I suggest that the president rule.

The PRESIDENT: The president will rule that the point of order is not well taken.

Mr. LAMPSON: I respectfully appeal from the decision of the chair.

The PRESIDENT: The gentleman from Ashtabula [Mr. LAMPSON] appeals from the decision of the chair.

Mr. JONES: I do not profess to be expert upon parliamentary rules—

Mr. DOTY: There are not such things.

Mr. JONES: —or the rules of this Convention, but it does occur to me as an ordinary layman upon the subject that all that is necessary to solve the question at issue is to make a simple application of what is admitted by the two gentlemen. They both agree that under general parliamentary rules the carrying of this motion to table would carry the whole matter to the table. Now, it is contended that Rule No. 57 creates an exception to the operation of that general rule. It is only necessary to apply the familiar principle that applies to all legal propositions, that an exception to a general rule can only relate to the matter mentioned in the exception. What, therefore, in the matter mentioned in the exception? The general rule carries the whole matter, proposal and all, to the table. Now, the matter mentioned in the exception is this: "The laying of an amendment upon the table—"

Mr. WINN: I rise to a point of order.

The PRESIDENT: State the point.

Mr. WINN: The president having ruled that the point of order of the gentleman from Ashtabula [Mr. LAMPSON] is not well taken and the appeal having been taken, there is nothing before the Convention except the appeal, which is not debatable.

The PRESIDENT: An appeal is debatable and the gentleman is in order.

Mr. JONES: I again want to call your attention to the matter included in this rule that makes an exception. As I said before, the whole matter, including the proposal, in the absence of this rule is carried to the table. Now, Rule No. 57 provides this: "The laying of an amendment upon the table, or its indefinite postponement, does not carry to the table the proposition sought to be amended." So this rule only relates to action upon amendments, and this not being an action upon an amendment it is clear to my mind that the general rule obtains.

Mr. MOORE: Mr. Watson brings a proposal to this Convention, No. 291, which proposal is referred to the committee on Initiative and Referendum. That committee amends this proposal and brings its report to this Convention, which report is laid on the table. The proposal itself is just as much alive as ever. The work the committee has done has not been concurred in, but has been laid on the table, and the proposal itself is as much alive as ever.

Mr. LAMPSON: I just want to say one word. If the gentlemen will consult the journal they will find that the motion was to lay the majority report and the minority report upon the table and there was no question of amendments.

Mr. HALENKAMP: Suppose the proposal were introduced and referred to the committee and a majority of the committee in reporting it back to the Convention recommended certain amendments, and the minority of the committee recommended certain other amendments, and the amendments of neither satisfied a majority of the Convention. How could the Convention proceed so as to get action on that proposal?

Mr. LAMPSON: They can move to recommit it, they could adopt the report or proceed to amend the proposal in numerous other ways, but whenever they laid the report on the table it would be there until taken off.

Mr. HALENKAMP: They could not dispose of the majority report or the minority report—

Mr. LAMPSON: Yes, they could. They could dispose of the minority report by itself and then they could take any action on the majority report that they saw fit, but if they decided that they didn't want to consider the majority report and laid it on the table it would rest there with all it contained and with all it was connected with until taken therefrom.

Mr. STEVENS: I voted for this motion to table these two reports, but I want to say that the main question up here is a question of recall, and if we are going to kill the recall in the Convention let us do it fairly and squarely and not by hair-splitting technicalities. I want the motion to prevail, but I want the prevailing of that motion to be fairly and squarely understood. Let us not have the friends of the recall, and there are lots of them in the Convention and outside, saying, after we go home and submit our report, that we wiggled the thing through and killed it while the minority was not looking.

Mr. LAMPSON: I am in entire sympathy, so far as the vote on the main proposition is concerned, with the gentleman, but this is a question of parliamentary procedure affecting not only this proposition but affecting every other one that may in like manner come before the Convention. I do not think we would allow our judgment on parliamentary proceedings to be warped by any opinion on the main proposition. I am willing to join with the gentleman in helping to bring about a fair vote on the proposition.

Mr. STEVENS: Do you not regard the main proposition as vastly more important than a parliamentary proposition?

Mr. LAMPSON: It is perfectly easy to take the main proposition from the table.

Mr. DOTY: Yes, once a week. Is it easy now?

The PRESIDENT: The president is ready to have a vote on the appeal. The president will state his reasons for making the decision. It has been the invariable practice of the president that when a report of a committee is made reporting a proposal back to the Convention to use this form: "The question is on agreeing to the report of the committee." When that motion has been carried invariably the next step has been this—the president has said with reference to all these questions: "If there be no objection the proposal will be engrossed and placed on the calendar for second reading." If objection is made at that point, clearly that objection brings before the Convention the question of engrossment, and on the license question that objection was made and a vote was had on that. It is true that in all these other questions we have hurried from that point because there has been no objection. As soon as a report of a committee is agreed to the president says: "If there is no objection the proposal will be engrossed." There has been no objection and the Convention has not taken notice of that step. It seems to me the point of the member from Cuyahoga is well taken, and at any rate the Convention suffers nothing. The decision is on the side of the greatest possible deliberation and consideration of the proposal pending.

The question now before the Convention is an appeal from the decision of the chair and the question is, Shall the decision of the chair be sustained?

Mr. HALFHILL: If I may be permitted to suggest, the simple way is to withdraw the appeal and make a move to take the two reports from the table.

Mr. LAMPSON: At the suggestion of the delegate from Allen [Mr. HALFHILL] I withdraw the appeal and I move that we take the minority and majority reports from the table.

Mr. DOTY: I second the motion.

The motion was carried.

Mr. DOTY: I now renew my demand for a roll call on the adoption of the minority report.

Mr. EVANS: I ask a clear statement of the question now to be voted on.

The PRESIDENT: The committee reported back this proposal with amendments. A minority report was made. The question now is on the adoption of the minority report and the secretary will read the minority report.

Mr. LAMPSON: I suggest that all the secretary need read is the recommendation of the minority report at the end of the report.

Mr. THOMAS: I want it all read so the members will know what they are voting on.

Mr. TALLMAN: The adoption of the minority report does away with the majority report.

Mr. LAMPSON: Indefinitely postpones the majority report.

The minority report was read by the secretary as follows:

> A minority of the Initiative and Referendum committee, to which was referred Proposal No. 291, entitled "To submit an amendment to the constitution relative to the recall of public officers," submit as a minority report the following:
>
> Section 1a of the proposal agreed to by the majority report describes the scope, purpose and intent of this proposal and is in the following words, viz:
>
> "Every elective public officer of the state of Ohio, or of any of its political subdivisions, may be removed from office at any time, by the electors entitled to vote for a successor of such officer, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law."
>
> That for the purposes of this minority report it is not necessary to consider any of the subsequent sections of said proposal, for in its entirety it is obnoxious to the spirit of our institutions and is a supplemental blow aimed at the integrity of representative government.
>
> That the judges of our courts, being also elective public officers in this state and included within the scope of this proposal, the same is a gratuitous assault upon the honor and integrity of our judiciary, and no condition subsists or has ever existed in Ohio, that remotely justifies creating any such procedure, or making it a part of our fundamental law.
>
> That the duties of every elective public officer of this state are defined by the law of the land, which law their oath of office compels them to obey and support, and if any transgress this obligation they should be tried by the law on charge duly made, before a proper tribunal, with orderly procedure under the rules of evidence acknowledged and subsisting in all stable governments, and they should not be assailed from the hustings and tried at the polls by popular tumult or be compelled to face destruction of their honor through a verdict

rendered by clamor, corruption, or partisan prejudice.

Therefore, if present methods of impeachment and trial for an unfaithful public official are deemed cumbersome or inefficient, we recommend such change in the organic law as will meet and remedy any condition fairly shown to exist, and we further earnestly recommend that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed.

Mr. HOSKINS: Is that all of that report?

Mr. DOTY: It is not. That is all of the report that is a report. The rest is a stump speech.

Mr. HOSKINS: I would like to know what attitude we are placed in in voting upon this proposition. I am in favor of the indefinite postponement of the entire matter, but if I heard correctly yesterday there were arguments involved in that report to which I cannot subscribe. That is the reason why I might hesitate to vote for the minority report, whereas if it were a simple recommendation for indefinite postponement of the entire matter, I would be willing to vote for it, because I believe that you who are in favor of the initiative and referendum are lugging in too much and that there is danger of injuring the chances of the adoption of the good things you have already done. I am in favor of the indefinite postponement of the whole proposition, but I am not willing to subscribe to all of that argument.

Mr. DOTY: Then just make a motion to strike out all of the stump speech of the member from Allen [Mr. HALFHILL] and that will relieve the situation.

Mr. HALFHILL: I object to that.

Mr. HOSKINS: I am not on to all of the parliamentary skids.

Mr. LAMPSON: Will the gentleman yield?

Mr. HOSKINS: Yes.

Mr. LAMPSON: Does not the gentleman understand that all he votes for is the conclusion at the end, that the rest is mere argument?

Mr. DOTY: If you call it an argument, all right.

Mr. HOSKINS: The only proposition was whether or not a vote for indefinite postponement of this matter was a vote upon all of the allegations contained in the bill of particulars.

Mr. LAMPSON: The only thing that we are voting upon is the report.

Mr. DOTY: That is all.

Mr. HOSKINS: Waiving aside all questions of any stump speech that may be contained in the minority report, I desire to suggest to the members of the Convention that we ought not to pass this proposal. It is really not a recall proposal at all in the ordinary acceptation of that term. It is a sort of makeshift on which I fear some of the gentlemen of this Convention desire to go on record for probably political reasons. Possibly it is not intended for anything else. I heard the demand made last night to have a record vote. I was content to let this baby sleep where you placed it yesterday and that is where it should have remained. The stump speeches of the majority report and of the minority report all belong in the grave yard, and I desire, as far as I am concerned, to put them there. I hope that before this Convention is concluded you will simply put both of these reports upon the table where you had them last night.

Mr. SMITH, of Hamilton: I want to ask Mr. Hoskins if he is willing to vote that the majority report be not adopted and that Proposal No. 291 be indefinitely postponed?

Mr. HOSKINS: Undoubtedly. I have not the language before me, but I move—

Mr. KING: I have just what you want written up.

Mr. HOSKINS: Are you sure of it?

Mr. KING: Yes.

Mr. HOSKINS: I yield the floor to Judge King then.

Mr. KING: I offer the following motion—

The PRESIDENT: The question is on the agreement to the amendment to the minority report.

Mr. DOTY: If we vote this amendment in we have the main question on the matter. Then if the main question is passed on by a yea and nay vote we will have a fair and square vote on it.

The secretary read the motion of Mr. King as follows:

Resolved, That Proposal No. 291 and the report of the committee amending the same be indefinitely postponed.

Mr. DOTY: That is a different proposition, but it is perfectly satisfactory when you understand it. That is a resolution postponing the whole matter. It takes out the stump speech and brings up the question whether you will have the recall on a yea and nay vote.

Mr. HOSKINS: I desire to protest that we did not put up any such issue. The gentleman from Cuyahoga [Mr. DOTY] is simply attempting to draw a line when the line is not drawn in the proposition at all. Your recall proposition is a mongrel, hybrid cross-breed. It is not a recall proposition at all and ought not to be set up by any one who believes in the recall. I want to reiterate that I believe it is forced in here for the sole purpose that certain gentlemen may go upon the record for the purpose of running for office this year. I do not think there is anything else in it.

Mr. FACKLER: The gentleman from Auglazie undertakes to criticise the report of the committee by saying it is a mongrel recall. It provides for the recall of every elective official, twenty per cent for state offiicials, twenty-five per cent if he is any other official. It provides that the recall can only be voted upon at regular annual elections. That was to get away from the argument constantly made by those who opposed the recall that the expense incident to a special election for the recall would defeat it. It provides also that in the recall elections a majority of all those voting at the election must vote in favor of the recall of the official in order to remove him from office. If the gentleman from Auglaize wants to have a record vote, let him come before the Convention and amend it and fight it out just as we did the initiative and referendum, but any man who votes for the resolution of the gentleman from Erie [Mr. KING] places himself on record as opposed to any kind of a recall coming out of this Convention.

Mr. WINN: There are fortunately a few of us who are not candidates for office and who have no political aspirations.

Mr. MILLER, of Crawford: Did you say "a few" or "two"?

Mr. WINN: I said a few. I want to say that there are a few of us who are not candidates for office and who have not any political aspirations. Those of us who are in that class have no fear of the effect of our votes upon the people. We have no fear of the recall in case we should be elected. So we are safe on all sides. Now I think every member of this Convention should understand and every elector in this state should know that whoever votes in this Convention in favor of the pending motion, which is to postpone indefinitely the proposal, votes that way to avoid an actual definite distinct vote upon the proposition.

Mr. HARRIS, of Ashtabula: Will there be any doubt in the minds of our constituents if we vote to postpone it that we are against it?

Mr. WINN: My notion is that there will be no doubt, but the member from Auglaize, whose judgment is as good as yours or mine, thinks that the electors of the state might be fooled that way.

Mr. HARRIS, of Ashtabula: You know that you and I may yet be candidates for office. Is not that true?

Mr. WINN: That is such a remote possibility that it has not affected me so far as my position on this question is concerned. I want to say again before I take my seat, that there is just one way by which we may have an opportunity to amend something that is before us so as to make a satisfactory recall proposition. Hence if the member from Auglaize [Mr. HOSKINS] is in absolute good faith respecting this question, then let something be pending here around which we may build such amendments as may be necessary to make it workable, and then we can vote for it; but if this motion prevails the whole proposition is dead, probably forever so far as the Fourth Constitutional Convention of Ohio is concerned.

Now I am in favor of the recall. I have never occupied any position where I did not understand that I was a servant to those who sent me there and that they had a right to kick me out when they wanted to. There is not a man in the hearing of my voice who ever employed a man to do work for him without retaining within himself the right at any time to discharge such employe. I have in mind now an instance of a man who has held office over and over again in the state of Ohio who, when called upon to bear in mind the oath he took at the time he took the burdens of the office, said, "I have but little respect for the laws of Ohio." I would have it made so easy that a man can be made to have respect for law, and when he pledges himself to support the constitution of his country and the constitution of his state and the ordinances of his municipality, I would have him know that he must respect every one of them; and that when he disobeys that oath of office those who placed him in office should have the right to put him out. I say when you have a man in office surrounded by the recall he will have respect for the constitution of the country and of the state and for the ordinances of his municipality.

Mr. EBY: Has not that man been repeatedly elected mayor of that municipality by a majority of the people of his municipality?

Mr. WINN: And if a majority want to recall him I want it made easy to do so.

Mr. LAMPSON: Suppose there are three candidates, a democrat, a republican and a socialist, and that the socialist party compose forty per cent, and the republican party thirty-five per cent and the democratic party twenty-five per cent. The socialist would be elected, but not by a majority of the votes. The other two by combining could recall him.

Mr. WINN: Certainly, and I would have it made so easy that whenever that man did not regard his oath of office the majority of his constituents could recall him. We are always willing, except in a case of that sort, to trust the dear people. We all say we have confidence in the people and I am not afraid that when a man in public office discharges the duties of his office as he should that there will ever be a time when the majority of the people will ask to have him recalled. It is only when he disregards the trust placed in him and tramples under foot the laws of the land that they want to recall him, and then they ought to have a right to do it.

Mr. PETTIT: I have not had an opportunity to say anything on this subject heretofore and I desire to say very few words now. We had an eloquent discussion some time ago on the initiative and referendum and there was a wonderful sight of talk about trusting the dear people, on very small per cents too, on that subject and one gentleman from Hamilton county was very loud in his vociferations as to the dear people on that proposition. I want to say, in order to make the initiative and referendum what it should be we should have the recall immediately following it. If we can trust the people on the initiative and referendum, why not trust them on the recall? One of the arguments that has been advanced here against the recall is that the county officers only have a two-year term now, but there is a proposal before the Convention extending the term to four years and making them ineligible to re-election. Why should any official in any county have the right to neglect his office and the people not have the right to recall him at a general election at the end of one year? If we are going to trust the people on the initiative and referendum, trust them on the other proposition. I don't know what right the member from Auglaize has to question any man's honesty on this matter. He talks as though favoring the recall were mere sentimentality on our part. We have had instances in my section of the state where the recall should have been applied. They say that judges ought not to be recalled; that is mere sickly sentiment. A man who is a coward on the bench was a coward before he went there. I am in favor of the recall and I believe a majority of the Convention are.

Mr. EARNHART: I want to say a word in defense of some of us who are candidates.

Not having any instructions from the people of my county in regard to this matter I want to say that in this as in every other case where I have no instructions I intend to vote what my judgment tells me is right. I intend to hew to the line, let the chips fall where they may. I intend to fight for what I think is right. If I go down in defeat I want to go for what I think is right and proper. I think this recall is an accompaniment of the initiative and referendum, to put in the hands of the people a weapon that they need now and will need in the future, and I want to be recorded on the side of progress. I don't want the state of Ohio to be found

wanting when the opportune time comes to be placed in the front rank of the sisterhood of states.

Mr. READ: My conception of the situation at present is that we are not voting strictly upon the report, but it is more a question of justice to the proponents of this proposal. Many of us were elected delegates with the understanding that we would advocate the adoption of the recall. Now there comes in here a minority report as a substitute for the majority report and a motion is made to indefinitely postpone a proposal which has come out in regular order from the Initiative and Referendum committee. Out of courtesy to that committee's report this Convention ought to be permitted to consider that proposal. Anything that keeps this Convention from properly considering it is unjust, unfair and discourteous to that committee as well as to others who are trying to get the recall before the Convention. I therefore appeal to the members of the Convention to vote down this minority report in order that the majority report may be properly presented and that it may go to engrossment and come up before the Convention in due time.

Mr. MILLER, of Crawford: It seems to me it is quite unfortunate that this proposal has to be considered before the fixing of the terms of the different officers. If we are to have long terms of office I am quite sure that the recall proposal will receive additional help, but under our present tenure of two years a good many of us feel that we now have sufficient opportunity to recall.

Mr. FACKLER: The term of executive officers has not been lengthened.

Mr. MILLER, of Crawford: If the recall goes through, the short ballot committee will recommend a four-year term for state officers, and the proposal of Mr. Baum provides a four-year term for county officers. If I thought those terms would be given I would vote for the recall, but under the present tenure I shall vote against it.

Mr. PIERCE: When I was a candidate for the position of delegate to the Constitutional Convention I went before the people of my county and told them that I was in favor of the recall applied to all officers, including the judiciary. I was the only candidate out of nine in my county who did that, and for some reason or other I received more votes than any other candidate before the people.

I am in favor of the recall. I am particularly in favor of its application to the judiciary. I think if we can get it for that office it will do more to reform the country than any other one thing that this Convention can do. I believe, if the citizen can take an ordinary man and make a statesman out of him before the election, that after the election he ought to be able to take the statesman and make an ordinary man out of him. If we can trust the people to put us into office we ought to be willing to trust the people to take us out of office. It is amazing to me that officers who claim they are in favor of rule by the people will come to a convention like this and try to prevent the people from ruling. We adopted the initiative and referendum to give the people more power and we now should adopt the recall for the same purpose, and I hope the amendment offered will not prevail. I would like for the gentleman to withdraw it, because I would like to see this question reduced to an issue. I agree with the gentleman from Defiance [Mr. WINN] that we should get this question at issue, where we will understand it and where the people of the state will understand it, and let us have a fair, square, honest vote upon it. It is immaterial, except so far as my individual vote is concerned, whether it be voted up or voted down, but I do want to give the people of the Convention an opportunity to vote honestly so that the people will know what we are doing.

Mr. HALFHILL: Let us take a little inventory of the situation and find the point at which we have arrived in discussing the question now before us. When this minority report was brought in here signed by four members of the Initiative and Referendum committee, they subscribed their names to a document every word of which they believed to be the solemn truth, notwithstanding the fact that it has been referred to in a way that would indicate that some member or members of that minority committee were preparing stump speeches for their constituents. I am not aware that any one of those four gentlemen is a candidate for any office, and I think in a solemn matter of this kind, where we are considering whether or not we will make a great departure in the fundamental law of the state of Ohio, there is nobody who would put in a report to this Convention which he did not honestly believe and could not conscientiously defend.

Last night before the author of this proposal which we are discussing had a chance to express himself, and while the Convention was in a measure tired, these two reports were carried to the table. I conceive it to be entirely proper that we take them up so that the issue can be fairly and squarely presented, and it is now fairly and squarely presented, and while the four members of the Initiative and Referendum committee who signed the report which sets forth what we believe about this measure recommend its indefinite postponement, we have no pride in that report and are willing that the argumentative part of it be carried out of existence by the amendment presented by the gentlemen from Erie county [Mr. KING]. What does he recommend? He recommends a fair, square proposition to indefinitely postpone Proposal No. 291 and all the amendments relating thereto, and that presents to you fairly and squarely the question. Are you in favor of the recall in the state of Ohio or are you not? If anybody doubts my position upon the question I would like to relieve him of that doubt. I am in favor of hitting it squarely between the eyes and killing it dead forever, and we can do it by sustaining this minority report. I think the recall as understood and applied to public officers is the most obnoxious thing that ever invaded the precincts of the state of Ohio. It is contrary to all the accepted traditions of a free judiciary as we have inherited them from our English ancestors.

Mr. PETTIT: Are you not also opposed to the initiative and referendum?

Mr. HALFHILL: I will answer the question when I get through, if you will pardon me. I say it is the most obnoxious thing as a proposed governmental agency that has ever invaded the precincts of the state of Ohio, and I believe I can prove it on principle. For five hundred years in England the sovereign power of that country, which is the king and parliament, has never interfered with the judiciary and has not dared to do so. For

five hundred years in England that has not been done, and now we, in this twentieth century, dare to say that the sovereign power, which is the people, may come in and interfere with the free exercise of the judicial rights and powers of a judge under the law and under the oath that he has taken to observe the rules that control and govern his high office. Judges are elected to represent not only the majority but the minority, and if abstract principles of justice crystallized into the constitution of our state amount to anything, then the judge under his oath of office is bound to stand by and contend for those principles, no matter what the majority of the moment say about it; and if he humbles himself to the will of popular passion and refuses to protect the rights of the most humble citizen, whether the majority demands those rights to be taken away or not, he is not fit to be a judge. However you apply it to other officials, you have the judges incorporated in this proposal, for we elect all our judges in Ohio. I want you to understand now that we are straight up to the question of whether or not you will depart from the accepted traditions that have obtained since our organization as a state, and whether or not you will entertain the entrance into the fundamental law of the state of Ohio of this principle of the recall, for that is what your vote means right now. Any member who is opposed to the recall ought to vote to sustain the minority report.

Mr. STILWELL: Was not the abolition of human slavery a departure from the traditions of the nation?

Mr. HALFHILL: The abolition of human slavery came about through and by virtue of the civil war, but it took a joint resolution of the congress of the United States, recommended for passage by the president and this brought about an amendment to the constitution. That is how that came about.

The time of the gentleman here expired and on motion was extended.

Mr. HALFHILL: Permit me to answer the question of the gentleman from Adams. I was opposed to the initiative and referendum as reported here and I am opposed to direct government. I have always said that I was in favor of the initiative and referendum as an aid to representative government if properly safeguarded, but I do not think the plan adopted by this Convention was properly safeguarded.

Mr. ULMER: I do not have to state that I am in favor of the recall, because when you look over the proposal book you will find Proposal No. 11, relative to the recall, was introduced by me. Although it has not been reported out I have not made any kick because I do not look for notoriety. As long as the principle I stand for is carried out I don't care who gets the credit for it. I noticed that other proposals were submitted and I was satisfied. I hope the minority report will be voted down. I believe in equal rights. I believe the people as a whole have just as much right as any private individual or any corporation, and I believe in the recall which is fair and square, fair to the people and to the public officers and when this minority report is voted down and the majority report is voted up and engrossed, at the proper time I shall have an amendment which will protect the man in office also. We ought to give the people the right to recall any public officer who proves himself unfit, immoral or dishonest, it makes no difference what the office is or to what branch of government the officer belongs. The people should have the right to remove an unfaithful officer. It has always seemed a funny proposition to me that the people can put a man in office and can't take him out. So I say let us vote down the minority report, vote in favor of the majority report, engross the proposal and then have it for a fair, square proposition to be amended.

Mr. HARBARGER: I shall not vote for the recall. While I am personally in favor of the recall, in view of conditions and my instructions and my desire to truly represent the people who elected me, I am compelled to vote against it. As far as I know the wishes of my people, I want to carry them out regardless of my own personal views. I am perfectly willing to have this matter come up and be discussed and fairly voted on, and yet I think I shall have to vote for the tabling of the whole matter.

Mr. SMITH, of Hamilton: I do not believe the Convention is in doubt as to what the question is we are going to vote upon in a few minutes. The question is whether or not this Fourth Constitutional Convention of Ohio wants to submit to the people the question of the recall. Now I sounded a note of warning to the Convention yesterday without avail when the question of capital punishment was under consideration. I want to do the same thing now. I am afraid we are going too fast. We are trying to do too much. Just realize, gentlemen, it has taken us four months to pass the proposals that we have passed. The people of the state of Ohio have to assimilate and study and decide upon these questions for themselves before voting on them. Let us band ourselves together and make a firm and united stand. Let us decide upon certain vital changes that we will submit to the people and then be willing and be courageous enough to vote against some of these other propositions which of themselves may be meritorious but are questions which ought not to be submitted to the people at this time when so much is at stake. The submission of these many minor propositions may injure the greater work that we are trying to do.

Mr. PETTIT: Why should not this question be submitted as well as any other question?

Mr. SMITH, of Hamilton: We are all entitled to our individual views on the matter, but I have a clear conviction, gathered from the people I have talked to about the situation and from a consideration of the matter, that if we submit this recall proposal and submit many other legislative propositions like the abolition of capital punishment, it is going to distract the attention and divide the minds of the people on the great questions we shall submit. In other words, it is going to make our work in convincing the people that what we do is right very much harder.

Every additional matter we submit makes it more difficult to center attention, and therefore I am in favor of limiting the number of things to be submitted to the great constitutional questions.

Mr. PIERCE: Are you going to pass over every proposal that comes up hereafter for the same reason?

Mr. SMITH, of Hamilton: No; to be frank with you, I am not. But I think the great propositions are, first, the initiative and referendum. We should bend every energy to get the people to adopt that. Then,

secondly, we should make our constitution simple of amendment. And there are some other questions that I shall vote for. I believe, though, we must differentiate one question from another, and, to be entirely frank, this question of the recall antagonizes a great many people. The initiative and referendum antagonize some people and I feel a little safer about the initiative and referendum without the recall.

Mr. PECK: You remember that we were elected in Hamilton county and signed a pledge?

Mr. SMITH, of Hamilton: Yes.

Mr. PECK: Do you remember that when the pledge was prepared that the recall was deliberately omitted?

Mr. SMITH, of Hamilton: Yes.

Mr. PECK: And it was published all over Cincinnati that we were not in favor of the recall?

Mr. SMITH, of Hamilton: The understanding is that it was not quite that. It however, was, that we felt it was inadvisable to let the Convention go on record as favoring the recall because it might endanger the initiative and referendum.

Mr. PECK: Well, I am satisfied if we had advocated the recall some of us would not have been here.

Mr. ANDERSON: Did not the Progressive League, of which the mayor of Toledo was president and Mr. Bigelow was secretary and treasurer, meet in convention and discuss what this Convention ought to do, and did they not deliberately and intentionally leave out the recall?

Mr. SMITH, of Hamilton: I am not competent to answer that. I think many gentlemen were in favor of the recall. If they left it out, as the gentleman says they did, they left it out as a matter of policy.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: If there is one thing I admire above another it is an open opponent, and on that account I raise my hat to the gentleman from Allen [Mr. HALFHILL]. He says he would like to swat the recall between the eyes. I am here to keep him from doing it if I can. However, I admire his spunk. He is out in his own uniform and under his own colors.

There is one thing in his talk this morning that impressed me, and that is his reverence for the English judiciary. I also lift my hat to the same power. The English judiciary has always maintained its own self-respect. It was never influenced by any class when it came to hand out law for the British nation. Three years ago there was the great engineers strike, the greatest industrial conflict in the history of the world. It extended from London to Hong Kong and back the other way. In the eleven months that it continued it all but paralyzed British industry. In all that time the British judiciary never issued an injunction nor was there a bayonet unsheathed. I have seen little industrial conflicts here at home when there was a distinct understanding with the judiciary beforehand that the representatives of a party on one side were to apply for the injunctions and it was arranged that the court would issue them. When the courts become the handmaid of policy, how do you expect honest men to respect them? I am not giving you a story; I am giving you history. All sovereignty is vested only in the people, and I wish to ask, Is the servant above the sovereign? Who says that the American people will interefere with any judge who even tries to approach common honesty in the discharge of his duty? We have witnessed the shortcomings of the judiciary in our day and we regret them, but the people who have been up against this class of abuses want to exercise their powers to prevent those abuses. I have seen judges on our benches handing down decisions as judges when they themselves and their families, as stockholders, were the beneficiaries of the judgment rendered. And then they tell us we should not reach for those men and attempt to recall them. I wish to say the quicker you get the recall into active operation the quicker will you sustain the honest judge and his position. It will always be his pride to say they never mentioned the recall in connection with his name. And the weak-kneed judge, whose son probably is a corporation employe at a large salary and who has taken his inspiration at the breakfast table, is very apt to remember that John is in the employ of the company. Who is not conversant with that view of the situation? We will have our eye on that gentleman and we will have the hooks on him. We can pull him down from his proud pedestal and keep him from besmirching the ermine by rendering a plausible decision in favor of John's employer. The recall will not hurt any honest judge, and it is only the rogues that we expect to go gunning for by the use of the recall.

In conclusion, we cannot be too careful. We are only the trustees of the rights that come to us. Remember that the rights we have are not alone ours, but that we are holding them for those who follow us, and let us endeavor to deliver to those who follow us as large a meed of right as we inherited. If we do that we will have performed our full duties to those who follow after us, and it is up to us to try to do it.

Mr. WATSON: Gentlemen of the Convention: I read the other day on the door cap of the main entrance, of the state house at Chillicothe, Ohio, which door cap now rests in the relic room of this building, these words: "General good, the object of legislation, perfected by a knowledge of man's wants and natures abounding means applied, by establishing principles opposed to monopoly."

That is one of the reasons why I am heartily in favor of the recall.

There is a science of American government. That science is the reflected will of the people. The Jeffersonian theory, as well as that of Lincoln, is that all political power is inherent in the people. That power is evinced by the people throughout our constitution and the laws in three co-ordinate branches of government, the executive, the legislative and the judicial. But how much of the legislative function is in fact performed by the legislative branch of our government? The courts have by a series of interpretations managed to write into the laws in many, and it must be said in most, important cases, interpretations which materially and in some cases absolutely, ignore and reverse the will of the people as expressed by their legislative branch. In short, the judicial branch of the government has gradually overshadowed until it has well-nigh overturned the function of the other branches of the government and made these two co-ordinate departments of government entirely subordinate and beneath and within the power and control of the judiciary.

I contend that this is one of the gravest problems confronting us as a state and nation—the greed and usurpation of the judicial branch of the government. I contend that laws created and enacted to represent the people's will and for their benefit should be interpreted by the courts in the light and spirit actuating their enactment, and the judiciary should lend itself to such spirit and interpret such will and spirit of the people. What is the sovereign power of America? What but the people? The constitution of the United States is but their creation. The constitution of the state of Ohio is but another of their creations. When your supreme court has decided a question of which it has jurisdiction in your state, to whom can you appeal? No branch of the government is provided to which such an appeal may be taken. It is absolutely arbitrary and supreme. An answer must at once suggest itself; there is but one tribunal to which an appeal may be taken from the decree of the judiciary—the people themselves. Without that appeal you have created an agency of government that has absolute arbitrary power. If the people have not the right to overturn that decree by recalling the agency that has uttered it, then the creature has become superior to the creator, and your boasted self-government has become a sham and delusion and is merely a counterfeit of what you fondly believe you have.

What recourse have the people of the United States from a decree of the supreme court thereof, an institution created by the people through the constitution as an agency of government?

And yet, when it has uttered its decree, has issued its fiat, has promulgated its mandate, no matter to what extent such decree may violate the principles of liberty or the rights of the citizens, no matter how subversive of all such rights, no matter how revolutionary in form, even though it override its former decision, as it did in the Standard Oil and Tobacco Trust cases, and despoil all the cherished canons of freedom, there is no pathway open to the people except obedience. The recall of the judiciary is not an agency to withdraw the judicial powers from that function, but to enliven and inspirit the judiciary with the spirit of the times and to make it as responsive to the public welfare as the spirit and will of vested property and gigantic vested interests. Both must have their protection, both at the hands of the judiciary secure that protection. Neither must be absolute, but if a contest shall come there must be in the hearts and souls of the judiciary the feeling that human when in conflict with property rights shall under the spirit and essence of our government be superior. The recall of the judiciary is the means whereby the creator is to place itself above its creature. It is to put into the political life of the nation the application of the scriptural injunction which declares: "Remember now thy Creator in the days of thy youth, that thy days may be long in the land which the Lord thy God giveth thee."

The recall of the judiciary is as necessary to maintain the supremacy of the people over all their agencies and creations as was the struggle of the fathers to establish liberty and to proclaim it throughout all the land unto all the inhabitants thereof. If it be claimed that the recall will terrorize the judges, I answer that no judge worthy the name will be swerved one jot or tittle from his true opinion, and as proof I cite the fact that no difference can be observed in the decisions of a manly judge at or near the close of his term from those at or near the beginning of his term. I invite your closest scrutiny from now on to the judicial decrees of our own most worthy judge. He comes to the people for re-election, and very properly too, for we all say, "Well done, good and faithful servant, enter thou into thy reward"—a second term. I warrant no difference will be observed in his decrees because of the fact that he desires the rewards of faithful service. No faithful servant of the people fears the people. It has been said that man can not be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found other men in the form of angels fit to govern him? Let history answer that question. Besides, by section 17 of article IV of the constitution, any judge of the state, since the adoption of the constitution in 1851 can be removed by a concurrent resolution of both houses of the general assembly, if two-thirds of the members elected to each house concur therein. It will be thus seen that the recall is now in the constitution and has been since it was adopted on the third Tuesday of June, 1851, affecting judges alone. Has this summary power terrorized your courts or intimidated them? Has it taken away their independence, this summary recall which has existed for sixty years? And yet men apparently sensible see or pretend to see in this self-defensive power of the people a menace and threat to our institutions.

It is urged that the recall of the judges would subject the judiciary to the clamor of the mob. The man who believes the people are a mob does not believe in a republican form of government. He should leave this country. He has no place here; his spirit is treasonable. Respect the judges, of course, the same as we respect men in other offices who do their duty; no more, no less. We cannot respect them if they are arrogant or tyrannical or treasonable or despotic, and if they are not held responsible they become to a greater or less degree arrogant, tyrannical, treasonable and despotic. They are entitled to the respect earned by the justice and wisdom of their judgment, and this should be measured, not by them, but by the sovereignty that creates them. Let their work be done in the light of the power they serve. The more direct and severe the light, the greater will shine the glory of their work well done.

"Resistance to tyrants is obedience to God." Such was the sentiment awakened in the heart of Thomas Jefferson as he stood in the lobby of the Virginia house of burgesses and heard the impassioned harangue of Patrick Henry in a burst of righteous indignation at the attempt of parliament to inthrall his country by the infamous stamp act of 1765. And such was the sentiment born anew in the hearts of the twenty-five governors of states when they declared that "tyranny in judicial ermine is as hideous as a Czar." Truly was it exclaimed in that now immortal session of governors, "We have made history." You can trample human rights under foot for a while, but that inherent right, which man cannot give neither can he take away, will assert itself in the sentiment, "Resistance to tyrants is obedience to God."

The PRESIDENT: The time of the gentleman has expired.

Mr. DOTY: I rise to a point of order.

The PRESIDENT: State your point.

Mr. DOTY: I don't understand that the gentleman's time is up. We are working under the half-hour rule.

The PRESIDENT: No; we are working under the five-minute rule.

Mr. HARRIS, of Ashtabula: I move that the gentleman's time be extended.

Mr. TANNEHILL: I think Mr. Watson as the author of the proposal should be given time to conclude his remarks.

Mr. WALKER: I think under the rule he is granted thirty minutes.

Mr. DOTY: No; I don't think he is. You don't get the thirty minutes until the second reading. The rule is now five minutes.

Mr. TANNEHILL: I move that the gentleman be given time to conclude his remarks.

The motion was carried.

Mr. WATSON: The action taken by the governors is no surprise to reading and thinking men. The surprise is that some action was not taken long ago. Who has not known that for years the federal judiciary has been the "city of refuge" to which the plunderbund flee when the state seeks to protect her people? Every man, trust or combine that sees fit to assail state enactments flees to this "city of refuge—the federal judiciary. Judge McPherson held the Missouri law confiscatory. Judge Van Devanter (now on the supreme bench because of his service to the trusts and monopolies) held the Arkansas law confiscatory. Judge Sanborn held the Oklahoma law confiscatory, and now he lays on the straw that breaks the camel's back by declaring the same in reference to the Minnesota law.

And then we have Judge Hanford, of Seattle, who was recently hanged in effigy because of his injunction in behalf of the street-car line in Rainier Valley. And was this a mob? No. The speakers were the mayor of Tacoma, one state senator and one man who last year was a candidate for the republican nomination for United States senator.

The Seattle case is vital. Here we have a federal judge against whom the people protest. He had repeatedly given decisions in favor of corporations, and finally, when he granted an injunction to a street-car corporation, restraining the people from even asking transfers, although the state supreme court had decided they were entitled to transfers, the people arose and denounced him in a mass meeting. After this mass meeting the two editors of the Seattle Star and six of the speakers were arrested on a charge of "conspiracy to obstruct justice." If these men are convicted it means that a precedent will have been established which will permit judges under fire to arrest and punish with jail sentences every one who dares to criticise them. It will be the first step toward the establishment of a judicial kingdom. Again I say "Resistance to tyrants is obedience to God.'

Also we have the detestable Archbald, of Wire Trust fame, who gave each of the eighty offenders, upon the plea of nolo contendere, the nominal fine of $1,000 Thus it is the federal courts fine the criminal Sugar Trust and the consumers of sugar are today paying the fine.

And then we have Judge Jackson, Judge Grosscup and Judge Pollock, whose names are well known to organized labor because of their servility to the special interests.

Federal court decisions of recent date read like the briefs of corporation attorneys. "Whose we are and whom we serve" has been translated by the federal judiciary to mean the trusts instead of the meek and lowly Nazarene.

I do believe that I should give
What's his'n unto Cæsar;
For it's by him I move and live,
And get my bread and cheeser.

Such seems to be the sentiment of the federal judiciary in its outrageous attempts to reduce the states to mere federal provinces.

Rate reductions in North Dakota, South Dakota, Arkansas, Missouri, Oklahoma and Minnesota have all been struck down by the hand of the federal judiciary. Are the ten million people of this empire of states ignorant, depraved or anarchistic? Nay, verily, they are, on the contrary, intelligent, enlightened and patriotic. As the West is the child of the East, these are our children, whose rights are being trampled under foot by this agency of government. When the courts refuse to do homage to the scheme of representative government, then have we judicial tyranny. But why do the governors of the states call upon the supreme court to throttle Sanborn, of the United States circuit court of appeals? Is not the supreme court as now constituted another "city of refuge" for the plunderbund? Justice Harlan thought so in his philippic against the "rule of reason." In order to save Standard Oil and the Tobacco Trust, this, our highest tribunal—save the people themselves who uttered this agency in representative government—reversed its decision in the trans-Missouri freight case.

Why not appeal to the people themselves, who uttered this agency? What is the sovereign power in the United States? What but the people?

Where tyranny begins law ends. It has been said "The tree of liberty grows only when watered by the blood of tyrants." Evidently before this matter is fully adjusted the tree of liberty will send forth new shoots.

Lastly, take the nine long years of "Beef Trust immunity." A federal judge always stood ready with the "immunity bath" to the packers' special plea in bar. How many of these malefactors have inspected jails? It is dawning upon the minds of many that there is truth in the statement that "Laws are like cobwebs, which catch small flies, but let wasps and hornets break through." Such was true in the days of Swift, who uttered these words, and such is evinced to us to-day.

These prosecutions have served only to make the law ridiculous and to bring the authority of the federal government into contempt. In no other civilized country would such a record be possible. Some day our federal judiciary will awake to the fact that they are but servants and not masters.

All this suggests a remedy, and that is the recall. Put the recall on all agencies of government, thereby bringing them into harmony with the spirit of the people who uttered these agencies.

Mr. TAGGART: How will your present proposal affect the federal judiciary?

Mr. WATSON: It will not at all. This is just preliminary to a point I shall bring up later.

I notice that Judge Grosscup, whose career has been a reproach both to the judiciary and to the bar and who applied the "immunity bath" to Rockefeller after Judge Kennesaw Mountain Landis had fined him $29,000,000 for rebating, will resign in October. He says:

> The formative period is approaching. Next year's presidential election will, I believe, be the last one on the old lines, the settlement for the future will come, not through courts of law, but the courts of public opinion.

The chieftain of plutocracy evidently had read the handwriting on the wall, and is getting out of the way of the rushing avalanche of public opinion that is to scourge from the temples of justice the oppressor and his tyrannical decrees and enthrone the people.

There is no thought of striking down the judiciary and those who suggest this ought to know better. A judge has no right except as the law gives it to him, and the people make the laws. The judge's right to declare a law unconstitutional is not an inherent right. It is granted by the constitution and the constitution is made by the people. In fact, the constitution is distinctly a popular instrument. Individual rights are protected in constitutions because the people who make the constitution want those rights protected, and the people who make the constitution can be trusted to deal as fairly with judges as with other officials. The argument that a judge can have any power not conferred on him by the people, or can rightfully exercise power contrary to the wishes of the people, is either a relic of past monarchy, from which we have departed, or a foreshadowing of the plutocracy which some seem to desire.

The attempt to appeal to religious prejudices is as absurd as it is inexcusable. The religious belief of the people is more secure in the hands of the people themselves than anywhere else. Equally aside from the line of legitimate argument is the argument that the people may act in anger or excitement. Elections provide time for deliberation, not as much time as some of the predatory corporations have taken to wear out the patience of the people by postponement and delays, but time enough to allow thought and deliberate judgment.

It is our view that the purpose of the recall is "to make the judiciary subservient to the popular will." To what will ought the judiciary be subservient? Not unpopular will? We have had enough evidence that judges are human to enable us to withstand the appeal now made to us to put our judges in a class by themselves. Have we not seen influential criminals escape just punishment through their power to touch the sympathies of the court, and have we not seen judges decide political questions with just as much political bias as the ward politician? What state has not had its examples of political judges—and judges are just as likely to be partisan when they secure an appointive judgeship through a pull as when they obtain an elective judgeship through their push. Have we forgotten the electoral commission of 1876? Did we not have five supreme judges on that commission, and were they not the senior judges in length of service, and did they not decide according to their political bias just as the senators and representatives did? It so happened that three of the judges were republicans and only two were democrats; therefore Hayes was seated. Had there been three democrats instead of two in the judicial group of the electoral commission Tilden would have been seated. It all depended upon the vote of one judge, and his vote depended entirely upon his party affiliations. He voted just as he voted at the polls, notwithstanding the fact that great constitutional questions were presented and mighty interests hung upon the decision.

Nothing is to be gained by shutting our eyes to the fact that judges are made of the same kind of clay that was employed on the rest of us, and it is just as well that the judge should have before his eyes constantly the possibility of a rebuke if he goes contrary to the sense of justice in the hearts of the people. A judge will be respected as long as he deserves respect, and why longer? If a judge betrays his trust it is better to let his sin fall upon himself than to have it rest upon the judiciary. There will be more respect for the court rather than less when the people have it in their power to remove an unfaithful servant.

I want to say, gentlemen of the Convention, that what is bringing this question so acutely to the people is not the unsoundness of the heart of the judiciary, but the unsoundness of heart of some of the men who constitute the judiciary, and the lawyers and judges should lend themselves to cut off the barnacles from the judiciary and to hold it up to be called clean, clean, instead of allowing the American people to hold it up and cry out unclean, unclean.

Now if a judge rests under suspicion the distrust is apt to spread to his associates, but when the people have the right in their own hands their failure to use it is an answer to the criticism of an official.

But suppose a mistake should be made occasionally. That is not a sufficient indictment against the system. Mistakes are to be expected, just as our constitutions contemplate the possibility of officials, even judges, proving false to their trust. But the right to make the mistake is what mankind has for centuries been fighting for. Let the mistake, if mistake must be made, be the people's rather than the king's.

Why is the power of removal lodged in the legislature except upon the theory that a judge may deserve to be removed? The recall is a form of impeachment in which the people act as a jury, and they can be trusted much better than any senate, even the senate of the United States. After the seating of Senator Lorimer who will claim that the United States senate is a better body to try an official charged with corruption than the people themselves?

The recall is coming and when it has come we shall have a higher standard of integrity and a more jealous regard on the part of our officials for justice and the public welfare.

Mr. TALLMAN: If the gentleman will yield I would like to move to recess until 1:30 o'clock p. m.

The delegate from Guernsey yielded for the motion and the motion was put to a vote and lost.

Mr. WATSON: One other point and then I am through. As I understand conditions, within a few years, probably two, the charter of the street railway system of Cincinnati will expire, and upon that question—

Mr. DOTY: No; the charter will not expire. There will be a re-adjustment of rates only.

Mr. WATSON: Then I will pass that matter. I thank the Convention and will detain you no longer.

The Convention recessed until 1:30 o'clock p. m.

AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. THOMAS: I demand a call of the Convention.

The PRESIDENT: A call of the Convention is demanded. The sergeant at arms will close the doors and the roll will be called.

The roll was called, when the folowing members failed to answer to their names:

Brattain,	Harter, Stark,	Miller, Fairfield,
Brown, Highland,	Henderson,	Norris,
Brown, Lucas,	Hoskins,	Okey,
Campbell,	Jones,	Price,
Cody,	Kerr,	Rorick,
Colton,	King,	Smith, Geauga,
DeFrees,	Lambert,	Stalter,
Doty,	Leete,	Stamm,
Dunlap,	Leslie,	Tetlow,
Dunn,	Marriott,	Watson,
Eby,	Marshall,	Weybrecht,
Fess,	Matthews,	Woods,
FitzSimons,	Mauck,	Worthington.

The PRESIDENT: There are eighty members present.

Mr. LAMPSON: I move that all further proceedings under the call of the Convention be dispensed with.

The motion was carried.

Mr. Kilpatrick arose to a question of privilege, and asked that his vote be recorded on Proposal No. 64, by Mr. Miller, of Fairfield. His name being called, Mr. Kilpatrick voted "aye."

Mr. Shaffer arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Shaffer voted "aye."

Mr. Pettit arose to a question of privilege, and asked that his vote be recorded on Proposal No. 62, by Mr. Pierce. His name being called, Mr. Pettit voted "aye."

Mr. Harter, of Stark, arose to a question of privilege, and asked that his vote be recorded on Proposal No. 64, by Mr. Miller, of Fairfield. His name being called Mr. Harter, of Stark, voted "aye.'

Consideration of the pending question was then resumed.

Mr. ANDERSON: I understand the question before the Convention is the indefinite postponement of all that is before the Convention with reference to the recall. Am I correct?

The PRESIDENT: Yes.

Mr. ANDERSON: I understand at this time we are limited to five minutes. I intend to vote against the indefinite postponement of this matter for the reason that I do not believe in preventing any question from coming before the Convention. Incidentally I wish to say that I am against the recall of those officers other than judges for the reason, that as matters stand now offices to which they are elected have terms of two years. If an officer is recalled it can only be done after he has served one year and then he would go out under his term of office in one more year, so there is very little to be gained by the recall.

Mr. PETTIT: There are some offices with longer terms than two years.

Mr. ANDERSON: I am speaking of those who would hold office for two years. It seems to be somewhat of a ridiculous misuse of the recall to apply it where the term is only two years. If the other report comes in making the terms four years then the recall ought to be added.

Let us look at what a curious mix-up came about in Seattle. A mayor was elected. He was recalled not only by his enemies, but by the friends of the candidate who wanted to be mayor. Then after he was recalled the other man was elected. Then the friends of the man he had just ousted, together with the enemies that any man is sure to make who goes into the office and can't appoint everybody, recalled that man in office. So you see a most ridiculous misuse can be made of the recall. I want to call your attention to another matter. We had a Progressive Constitution League of which the mayor of Toledo was president and our president the secretary, and the league determined that the recall would not be pressed; in other words, that the different candidates over the state would not be asked to pledge themselves with reference to the recall, believing, and I think rightly, that the initiative and referendum was the great thing to be desired, and the thing to which they should devote their energy, with the understanding and belief that after the Convention adopted the initiative and referendum, and after the initiative and referendum had been ratified at the polls, then a majority of the people in the state of Ohio, if they wanted the recall, could grant it.

Mr. PETTIT: Was what that league did binding on any member who did not belong to it or didn't pledge?

Mr. ANDERSON: No; I was not a member and it was not binding on me, but the point is that apparently those people who believed in the theory at that time have decided not to press it, believing that the recall would be defeated.

Now I am giving an opinion that has been coming to me more firmly every day, that when we finish our work a constitution will be submitted to the people for the approval of the people in one document with two questions on the outside, one, the question of woman's suffrage and the other the liquor question. If you put the recall in the constitution itself and put it up to the people under the alternative of "new constitution, yes," and "new constitution, no," it will lose us tens of thousands of votes for the constitution as a whole. I believe the Progressive League was right and the recall should not be put in the constitution. I am certainly opposed to it, because we have not decided as yet that all the officers should have four-year terms.

Mr. THOMAS: If all the members of the Convention were through with their dinners, and were here to vote, I would move the previous question, but I want every one of you to understand exactly what this question is. I think it is understood that the recall proposal, as reported by the majority of the committee, is not satisfactory to the socialists in this Convention, or the state. The socialist proposal on the recall is contained in Proposal No. 161, introduced by Mr. Moore, and it pro-

vides that, on the presentation to the proper authority of a petition for a recall of an elected officer, verified by ten per cent of the voters of the district represented by such officer, a new election to fill the office shall forthwith be called. There is a lot of mischief that an officer can do in two years from the time he is elected if he cares to undertake it, and in the report of the committee the recall only applies to the first year of a term of office for which the officer might be elected, because by the time the regular election would come around with a two-year term the term would be concluded.

Now while the question is being discussed about the recall of judges, I want to call attention to the fact that there is one judge in Ohio sitting on the bench who was indicted by the grand jury in two counties for embezzlement, and charges were preferred against him in the house and the senate. It is Judge Donnelly, of Henry county. The judiciary committee, a number of the committee now being under indictment themselves, did not consider the grand jury indictments, and refused a hearing on the subject, and the senate judiciary committee said that this indictment in itself was not sufficient evidence to even warrant having a trial on the subject.

Mr. HALFHILL: You would not say because a man is indicted and is defending himself against a charge of that kind he is guilty to the extent that the legislature ought to act on it, would you?

Mr. ANDERSON: A point of order. Is the gentleman of Allen [Mr. HALFHILL] suggesting a question of privilege in this matter?

Mr. HALFHILL: I want to make an answer.

Mr. THOMAS: If my memory serves me he was convicted in one case.

Mr. HALFHILL: Your memory is not correct.

Mr. THOMAS: It appears to me when two indictments by grand juries from different counties are found it ought to be sufficient to warrant at least a trial on that case before the legislature to find out whether there was any truth in that or not. The socialists believe that every public officer should submit himself to the will of the people when the people themselves believe he is not performing the duties of his office, and I feel that this particular amendment to the motion ought to be voted down and that we ought to have an opportunity to vote on the proposal as reported by the committee and amend it in such a manner as to provide for a real recall for judges and other public officers in Ohio.

Mr. DOTY: I desire to move, not for serving any purpose of my own, but for the purpose of having a definite time fixed, for a vote on this question.

I move that further consideration of the resolution by Judge King be postponed until 10:30 o'clock a. m. and be made a special order for that hour on Tuesday and for a vote to be taken on it at 11:30 o'clock a. m.

The motion was carried.

Mr. STILWELL: In order to satisfy what seems to be a desire among the members who expressed an opinion to me during the noon hour upon the subject, I move that when we adjourn today we adjourn until seven o'clock Monday evening.

The motion was carried.

Mr. HARRIS, of Ashtabula: As a matter of interest — I do not know whether it interests others, but I want to ask if this Convention expects to recess a week from Monday night with the work all done and to reconvene at some time after that to finish the work of the committee on Arrangement and Phraseology? I can not understand how it is possible to act within the limits of what we have resolved to do and take this action which has just been taken.

The PRESIDENT: The next proposal is Proposal No. 230, which the secretary will read.

Mr. TETLOW: I move that Proposal No. 230 be indefinitely postponed.

The motion was carried.

The PRESIDENT: The next is amended Proposal No. 241 — Mr. Dwyer.

The proposal was read the second time.

Mr. FACKLER: I offer an amendment.

The amendment was read as follows:

Strike out lines 11 to 16 inclusive and in lieu thereof insert the following:

"Any judge of a court of record of this state may be removed from office by the governor whenever, after due trial as may be provided by law, it shall be found that such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that such judge has been guilty of misconduct in office involving moral turpitude, the persistent violation of a clear mandate of the constitution, intoxication while attending to the business of the court, gross inattention to the duties of the office or conduct tending to bring the court into disrepute. Laws shall be passed providing for the creation of commissions having authority to hear and determine the truth of any such charges and prescribing the methods of procedure with reference to the same."

Mr. Colton moved to amend Proposal No. 241 as follows:

After line 10 add: "When the governor is on trial the chief justice shall preside."

Mr. EVANS: I offer a substitute.

The substitute was read as follows:

Strike out all after the resolving clause and the pending amendments and insert the following:

ARTICLE IX.

REMOVAL OF OFFICERS.

Any officer of the state, a district, county, city, village, or township may be removed from his office for nonfeasance, misfeasance, malfeasance, corruption, inefficiency, drunkenness, immoral conduct or for any other cause or causes which the court may deem sufficient. The jurisdiction for removal for all officers except judges of the circuit court shall be in that court. A petition for the removal of a circuit judge shall be filed in the supreme court and be heard there. Such petition shall be presented by any five electors and tax payers in the state, district, county, city, village or township, as the case may be, and security for costs shall be given. The officer shall be notified, as the law may prescribe, and shall have a preliminary hearing. If on such hearing, the court

shall require the charges or any of them to be answered, the state shall take charge of the proceeding and prosecute it to a final result. The officer charged may resign at any time and if he does, the proceeding shall be dismissed at his cost. On the final hearing the court may dismiss the charges, or find the officer guilty of one, or more charges, declare his office vacant and remove him therefrom. Costs shall be adjudged as the court may deem proper. All further particulars under this article shall be prescribed by law.

The PRESIDENT: The question is on the substitute offered by the delegate from Scioto.

The substitute was not agreed to.

The PRESIDENT: The question is on the amendment offered by the delegate from Portage [Mr. COLTON].

The amendment was not agreed to.

Mr. ROEHM: I did not vote because I did not know what was voted on in those two amendments. We ought to get through with our business, but we ought to have a full attendance in order to do business. Several nights ago we started to do business. It was necessary to have three or four people change their votes in order to have a reconsideration of a matter and then consume an extra day to get it through. Why? Because we had a poor attendance. I object to having proposals called to which there is some opposition and considered by three-fourths or less of the members of this Convention. I do not believe it is fair to require that three-fourths of those present should be necessary to carry a proposal when it ought to be only a majority of the whole Convention. I believe we ought to have some means of compelling attendance. We ought to have reasonable rules, so the members will be present. I do not know what those amendments are that were lost, but I think that they should be reconsidered, and I move that the vote by which the amendment of the delegate from Portage was declared lost be reconsidered.

The motion was carried.

Mr. LAMPSON: Now what about the other amendment.

Mr. WINN: I make the point that the amendment offered by the member from Portage is a substitute for all the others.

The PRESIDENT: No; it is not.

Mr. COLTON: As the proposal now stands the lieutenant governor presides over the senate and if the governor is convicted the lieutenant governor would naturally succeed him and the lieutenant governor, having that interest, ought not to preside over that trial. My amendment provides that the chief justice shall preside on the occasion.

Mr. ELSON: Is it not a fact that there is no provision for a chief justice?

Mr. COLTON: But there always is a chief justice. One of the judges of the supreme court is chief justice. It seems to me it is a reasonable provision that on the trial of the governor the lieutenant governor should not preside.

Mr. FLUKE: It seems to me we are going at this matter in too much of a hurry. In the absence of the recall the people of Ohio have a right to expect that we submit something to them to allow removal of derelict officials. For that reason I am very much interested in any proposal looking toward the impeachment of public officials. As far as I am concerned — it may be my fault — I have not had an opportunity to inspect this amendment and there are others in the same position. I would like to have some consideration given this matter. It is too important to run over. We would like to hear all of these things read.

The PRESIDENT: The amendment has been read by the secretary twice, but he can read it the third time if desired.

Mr. ROEHM: It was not in order, I believe, to move a reconsideration of the votes by which both of those amendments were lost, and I think the amendment of the gentleman from Scioto ought to be considered for the same reason I made the other motion. I now make that motion.

The PRESIDENT: The motion will not be entertained now. The question before the Convention is on the adoption of the amendment offered by the delegate from Portage.

The amendment was not agreed to.

Mr. ROEHM: Now I renew the motion to reconsider the vote by which the amendment offered by the gentleman from Scioto was laid on the table.

The motion to reconsider was carried.

The PRESIDENT: The question is on the adoption of the amendment.

Mr. LAMPSON: We would like to have the member from Scioto explain that.

Mr. EVANS: I have regarded the provisions in the constitution of this state and every state in the Union where provision is made for the removal of public officers by impeachment as an utter failure, and I think that all of that matter about the impeachment of public officers ought to be stricken from the constitution we are about to make. I believe that every one of the states, except one, and that is Oregon, retains these provisions as to public officers. I have formed the idea that the senate is not the proper body to try these charges. It is entirely too temporary. It is not judicial in its character and its remedy is impracticable; so much so that it is almost impossible, and it amounts to no remedy at all. Now I think that every officer — I don't care if he is a judge or what he is, legislative, ministerial or executive, or what kind of a term he has — ought to be removed for any of these causes read in your hearing. At the same time I say to you that when a man is elected or appointed to an office he has a property right in that office and he has a right to discharge the duties of that office and receive the emoluments until his term expires. He ought not be removed by any public clamor and I think the only right way is to have a judicial tribunal. Let the charges be made against him, let the courts have a preliminary hearing and let the examining court say whether those charges are serious. If the examining court is satisfied on the preliminary hearing, just as a grand jury considering the question as to whether a crime has been committed, let the charges be heard and let the state take the matter up. Let the officer resign if he doesn't want to face the charges, but if he thinks he is not guilty and wants to face them, let the state take charge. I am opposed to the recall as presented. It creates a new tribunal, a tribunal which does not act

judicially, and it is contrary to representative government and contrary to the spirit of our institutions. But I say the recall or removal that is embraced in this provision of mine is strictly in harmony with the principles of the organic laws of our state and of every other state, and it is a proper way to get rid of an officer if he is derelict in his duty or inefficient.

Mr. PECK: Do you bear in mind the provision of section 17 of article IV, which provides a simpler mode for removing a judge than any you have mentioned?

Mr. EVANS: Yes; I know about that.

Mr. PECK: I have not heard you refer to it.

Mr. EVANS: That has never been done. That remedy is impracticable.

Mr. PECK: Why any more so than yours?

Mr. EVANS: That takes him before the legislature, away from his home. Let us have a remedy right where the wrong is committed. That remedy is impracticable. Nobody resorts to it. I would wipe it all out of the constitution — everything that is said on the subject of impeachment.

Mr. PECK: That is not impeachment. It is simply by resolution.

Mr. EVANS: This matter has been adopted in Oregon. All matters that ordinarily are subject to impeachment have to be brought in the ordinary court. I think the people have good cause to demand the remedy in their organic law to remove a derelict officer. It is a crying demand. It is not by a public vote but by a judicial hearing, and I am in favor of that heartily.

Mr. THOMAS: Will you please state what your amendment contains? I think there are only a few of the members who understand.

Mr. PECK: Let us have it read.

The SECRETARY: It is Proposal No. 83 in your proposal book.

Mr. WATSON: Evidently the gentleman from Scioto [Mr. EVANS] is chasing this matter as far as he can. He chased it up to the supreme court, but he stopped there. Suppose we are going to try a member in the supreme court. In what court would you try that member? Would he have a new court? If the member of the new court were guilty of malfeasance or corruption where would you try him? Where is there any better body before which to try it than the people. There is no power greater than the people who have made those agencies of government. Speaking about it being contrary to the spirit of our institutions, the people are the bosses of all government. The people elect these officers for servants and the officers hold no property rights in their office except that which the people give them, and if they are chosen for services with the idea and understanding that for misfeasance or malfeasance or corruption the people can recall them, they would knowingly enter upon the sacred duties of the service with the feeling that that service must be justly rendered to their constituents or the recall would be effective. There is no power you could set up, real or imaginary, that supersedes the power of the people to govern themselves.

A vote being taken, the amendment offered by the delegate from Scioto was not agreed to.

Mr. NYE: I see in the amendment of the delegate from Cuyahoga [Mr. FACKLER] a provision that a judge may be removed if he is sick or unable to perform the duties of his office extending over the period of six months. It is a well-known fact that men can't be disqualified for that long and not be disqualified for good, and I therefore offer an amendment.

The amendment was read as follows:

> Strike out of the amendment offered by Mr. Fackler the following, beginning with line 5: "such judge is unable to perform the duties of his office by reason of physical or mental infirmity extending over a period of more than six months or that".

Mr. WATSON: I offer as a substitute for Proposal No. 241 the majority report of the committee on Proposal No. 291.

Mr. PECK: I rise to a point of order. There are two amendments pending and it is not proper to offer the third one.

The PRESIDENT: The point of order is well taken.

Mr. BEATTY, of Wood: The recall being set for next Tuesday and this being of the same nature, I move that this proposal be continued until 11:40 next Tuesday.

The motion was carried.

Mr. PECK: I ask unanimous consent to present some reports from the Judiciary committee. I want to present them to get them on the calendar.

By unanimous consent Mr. Peck submitted the following report:

> The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 304 — Mr. Halfhill, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:
>
> Strike out all of lines 4, 5, 6, 7 and 8.
>
> In line 9, strike out "section 2" and in lieu thereof insert "section 1."
>
> In line 30 change the period to a semi-colon and add thereafter the following:
>
> "and any existing court heretofore created by the general assembly shall continue its existence until otherwise provided by law. The judges of the courts of common pleas in office, or elected thereto prior to January first, 1913, shall continue to hold their offices for the term for which they were elected."
>
> Between lines 20 and 21 insert the following:
>
> SECTION 2. That section 7 of article IV be amended to read as follows: There shall be established in each county, a probate court, which shall be a court of record, open at all times, and holden by one judge, elected by the voters of the county, who shall hold his office for the term of four years, and shall receive such compensation, payable out of the county treasury, as shall be provided by law. But the general assembly may provide by law to submit to the electors of any county the question of combining the court of common pleas and probate court in such county and provide that such courts shall be combined in any county where a majority of the electors at such election shall so vote. And provision may also be made for similar submission to the electors of the question

of the separation of such courts in each county where the same may have been combined and for such separation when a majority of such electors shall so vote."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck the proposal as amended was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 325 — Mr. Anderson, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all of said proposal after line 3 and in lieu thereof insert the following:

"Statutes in derogation of the common law shall not be strictly construed."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 305 — Mr. Hoskins, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 225 — Mr. Halfhill, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 69 — Mr. Walker, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 303 — Mr. Halfhill, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 120 — Mr. Rockel, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 240 — Mr. Anderson, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all of said proposal after line 3 and in lieu thereof insert the following:

"The right of action to recover damages for injuries resulting in death shall not be abrogated and such damages shall not be subject to any statutory limitation as to amount, but the recovery must be for the full amount of all damages so sustained."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 326 — Mr. Anderson, having had the same under consideration, reports it back with the recommendation that it be indefinitely postponed.

The report was agreed to.

Mr. Peck submitted the following report:

The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 166 — Mr. Stilwell, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:

Strike out all of lines 4, 5, 6, 7 and 8 and in lieu thereof insert:

"SECTION 33. Laws may be passed to secure to mechanics, artisans, laborers and material men, their just dues by direct lien upon the property, upon which they have bestowed labor or furnished material. No other provision of the constitution shall impair or limit this power."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

Mr. PECK: I move that the rules be suspended and Resolution No. 106 that I introduced the other day be considered now.

The motion was carried.

The resolution was adopted.

Mr. HARRIS, of Hamilton: I ask unanimous consent to introduce a report from the committee on Municipal Government.

Consent was given and the report was read as follows:

The standing committee on Municipal Government, to which was referred Proposal No. 272 — Mr. FitzSimons, having had the same under consideration, reports it back with the following amendment, and recommends its passage when so amended:

Strike out all after the resolving clause and insert in lieu thereof the following:

To submit an amendment to the constitution. — Relative to the government of municipalities.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVIII.

MUNICIPAL CORPORATIONS.

SECTION 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SECTION 2. The general assembly shall, by general laws, provide for the incorporation and government of cities and villages; and it may also enact special laws for the government of municipalities adopting the same; but no such special law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SECTION 3. Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state, as a whole, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

SECTION 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SECTION 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility or to contract with any person or company therefor shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SECTION 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SECTION 7. Any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government; but all such charters and powers shall be subject to general laws affecting the welfare of the state, as a whole.

SECTION 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors of the question "Shall a commission be chosen to frame a charter?" The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation and provision shall be made thereon for the election from the municipality at large of fifteen electors thereof who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provisions for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SECTION 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and shall be submitted by such legislative authority when a petition setting forth any such proposed amendment and signed by ten per centum of the electors of the municipality is filed therewith. The submission of proposed amendments to the electors shall be governed by the requirements of section

8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any amendment so submitted is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto, within thirty days after adoption by a referendum vote, shall be certified to the secretary of state.

SECTION 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law. Any municipality appropriating private property for a public improvement may provide money therefor in part or in whole by assessments upon the abutting property not in excess of the special benefits conferred upon such abutting property by the improvement.

SECTION 11. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SECTION 12. The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SECTION 13. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors signing any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

SECTION 14. The adoption of this article by the electors of the state shall repeal article XIII, section 6, of the constitution.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Harris, of Hamilton, two thousand copies of the proposal, as amended, were ordered printed.

Mr. KNIGHT: It was the understanding between the committee on Education and the committee on Municipal Government that after the report of the committee on Municipal Government the committee on Education would file its report. That report from the committee on Education is ready. It is signed, but the vice president has it in his desk and it can not now be filed. I make this explanation so that when the report is made Monday night it may be, without objection, placed immediately following the report of the committee on Municipal Government.

Mr. DOTY: I move that the secretary be instructed to place the report of the committee on Education when it is made so that it will come right after the report of the committee on Municipal Government.

The motion was carried.

Mr. READ: I move that the Legislative and Executive committee be relieved from further consideration of Proposal No. 310 and that the same, according to Rule No. 82, be reported back to the Convention.

The PRESIDENT: The proposal is before the Convention and the question is on its adoption.

Mr. DOTY: No; the question is on its engrossment. What is the proposal?

The proposal was here read.

Mr. HARRIS, of Ashtabula: The secretary of the committee has the committee's report to submit and he also has other reports from the committee. That they are not submitted is an inadvertance.

Mr. McCLELLAND: Is it in order to move to recommit this proposal to that committee?

The PRESIDENT: It is.

Mr. McCLELLAND: Then I make that motion.

The motion was carried.

Mr. FARRELL: I move that we now adjourn.

The motion was seconded.

Mr. PECK: I have a few more reports to offer.

Mr. FARRELL: I withdraw then.

Mr. Peck submitted the following report:

> The standing committee on Judiciary and Bill of Rights, to which was referred proposal No. 322—Mr. Bowdle, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:
>
> In line 4 strike out the words "the legislature shall have power to provide by law" and in lieu thereof insert the words "laws may be passed".
>
> In line 5 strike out the word "medical".
>
> Strike out all of lines 7 and 8.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. PECK: I now move that the committee on Judiciary and Bill of Rights be discharged from further consideration of Proposal No. 301, and that that proposal be referred to the committee on Education.

Mr. KNIGHT: On the 7th of March that proposal was taken from the committee on Education. The committee on Education objects to having this proposal footballed back and forth to it after the Convention has ordered it out of that committee's hands once. It is a proposal to amend the bill of rights, belongs in the hands of the Judiciary and Bill of Rights committee, does not belong to the committee on Education and the motion should not be agreed to.

Mr. PECK: It is a proposal to amend the bill of rights with reference to education and therefore we thought it belonged properly to the committee on Education. There is a very learned lady who wants to make a long speech to someone and we want the committee on Education to hear it. We heard several sections of it last evening. We think we heard enough and we would like to have the committee on Education take the last of it.

Mr. KNIGHT: The committee on Education has had all the light it needs on this subject and the Bill of Rights committee needs more light.

Mr. PECK: Nobody was in favor of it. I move that proposal be indefinitely postponed. I move that the committee on Judiciary and Bill of Rights be relieved from further consideration of that proposal and that the proposal be indefinitely postponed.

Mr. ANDERSON: Mr. President—

The PRESIDENT: All of those in favor of the motion.

Mr. ANDERSON: Mr. President—

The PRESIDENT: Do you want recognition?

Mr. ANDERSON: Yes.

The PRESIDENT: The gentleman from Mahoning.

Mr. ANDERSON: I believe delegates ought to have some little glimmering of intelligence before they vote on the question. For the benefit of those who want to know what they are voting about, the proposal seeks to put into the constitution a recognition of physical training in the schools. It is admitted by everybody that so far as the law is concerned it is not needed, but as the lady explained last night for the influence it would have it ought to be put in as are a good many other things, because physical training is so much needed in the schools; and I think it ought to be in the constitution. There are a good many other things going into the constitution not nearly so meritorious as this.

Mr. PECK: It was admitted by the advocate of this resolution that there was no lack in the power of the general assembly to pass any law necessary for physical education, and all she wanted was that it should go into the constitution for the moral effect it would have, but it seemed to me and also to other members of the committee that it would be an injurious addition, so far as the sound and appearance is concerned, to that clause of the constitution. I think it is section 5 or 7 of the bill of rights to which it is proposed to attach it, which provides for the encouragement of moral and religious education. She wanted to attach to that physical education. I think the word "education" is broad enough to cover it all, and it has been construed so. The general assembly has passed numerous laws in aid of education, and the people seeking to have this incorporated in the constitution do not deny that.

Mr. KRAMER: This is the only proposal that I have introduced. I was sorry that I had to introduce one. Just a word in reference to what Mr. Knight said. This thing has been thrown backward and forward between those two committees long enough. We placed it in the hands of the committee on Education and immediately the committee on the Bill of Rights began to kick and said the thing belonged to them. On account of the objections raised by the committee on the Bill of Rights the proposal was referred to that committee. It was not the fault of the proponent or the Convention that it was so referred. It was referred to the committee of the Bill of Rights on their own demand. I am not saying what ought to be done with the proposal, but I will say this committee on the Bill of Rights has not given it any consideration. I say that for the benefit of the Convention. I was there last night when the lady was seeking to be heard, and she was not heard to any great extent. I want to make myself plain before the Convention. I think the proposal has considerable merit. I know it is as Judge Peck says, that we can do without it, but so could we have done without that proposal with reference to primary elections or the one with reference to capital punishment or about fifty other things we have done here. We could have done without putting any of those in the constitution. There is not one member in twenty of this Convention who has so much as read this proposal. If you want to vote for its indefinite postponement without reading it that is your privilege, but I don't think it is treating fairly the persons who are advocating it. I just want to read it and I want to show you it takes everything in the section to make a man. Then you can do as the Convention sees best. The conclusion of section 7, article I now reads, "Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws," etc. Now I simply want to put in after the word "knowledge" the words "and physicial efficiency", so it would read "Religion, morality, knowledge and physical efficiency, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws," etc.

Mr. DOTY: I think the italicized words in line 13 indicate that something else has been added.

Mr. KRAMER: I will get down to that. The thought I want to express is that we ought not to vote it down simply because it can be taken care of without constitutional provisions. Everything here can be taken care of by the legislature without constitutional requirements, but it is the idea of those back of the proposal that it takes all of these things to complete and round out a man, and without physical efficiency, religion and knowledge are crippled. I don't care so much about it as the persons who are back of it do, and if you will give it a minute's consideration I think you will say it ought not to be simply voted down just because it could be done by the legislature without the provision.

Mr. ANDERSON: Is there anything in that that could harm any person if you would adopt it?

Mr. KRAMER: No.

Mr. PECK: Then can you not put in the ten commandments? Is there anything in the ten commandments that will hurt anybody? That is a comment on Mr. Anderson's question.

Mr. ANDERSON: It might be well to let the Judiciary committee read them and get some knowledge of them.

Mr. KRAMER: It looks to me as if there could be no objection to recognizing this in the constitution just exactly as the constitution recognizes morality, knowledge and religion. It seems to me it is a proposition with considerable merit. Now there is another thing added to it. "Those being essential to good government and the success of government."

Mr. ELSON: Could not that be worded better?

Mr. KRAMER: Maybe it could be. I want to call the attention of the Convention to the action of the Judiciary committee. Just the minute the lady began discussing this proposition last night some member of the committee suggested it ought to go before the committee on Education, that it belonged there and he consented and so did I.

The PRESIDENT: The matter is not properly before the Convention and the chair will now put the question on the motion that the Judiciary committee be relieved from further consideration of the proposal. Then we will proceed with the discussion.

The motion was carried.

The PRESIDENT: The gentleman from Richland [Mr. KRAMER] still has the floor.

Mr. KRAMER: I am sorry that point of order wasn't suggested sooner. I don't care to discuss it further. If the Judiciary committee wants to get rid of it and the committee on Education doesn't want to take it up, do with it whatever you want. I would like to say it is a proposition that ought not to be simply passed up for consideration just as we did with Captain Evans' proposal this afternoon. You treated that proposition worse than you would treat a yellow dog. There were not nine men that voted on either side, and yet the proposal had a great deal of merit in it. That puts us in a bad light with our constituents. What can I go back and tell these people interested in the proposition? I can't tell them anything except that the Convention gave absolutely no consideration to it. Simply because one or two men thought it had no merit in it the rest jumped at the conclusion and voted to indefinitely postpone it. That is not the way I would like to go back to Mansfield and tell the people who are back of it. I want this thing considered and as the gentleman from Mahoning [Mr. ANDERSON] has said, if you would study it for a minute or two and arrive at the conclusion that there was nothing in it, I could tell the people at Mansfield that the Convention after most thorough consideration decided it was not worthy of adoption. What can I tell the lady interested in this proposal when I go back now? That is what I want to know. Simply because the ladies can't vote don't say they are not citizens. Now, what did we do with that Miller proposition that was presented by the ladies—

Mr. PECK: The gentleman should confine himself to the proposal under discussion.

Mr. KRAMER: I think that point is well taken.

Mr. BIGELOW: Mr. President: There seems to be no disagreement that there is nothing in this proposal that could not be accomplished by the legislature. I have today's issue of the Ohio State Journal and I am going to read a part of an editorial. I do not want to be understood as committing myself to all that has been published in the past or may be published in the future in that paper, but this is the editorial, entitled "Province of a constitution."

> What is a constitution anyhow? It is an instrument defining inherent human rights and prescribing methods for their protection. When this is overdone, and it is sought to establish in that constitution custom, habit, convenience, or forms of opinion, then the object is defeated, and the will of the people, which is one form of human rights, is hampered or suppressed.
>
> The province of a constitution is exceedingly limited. When one goes beyond it, he interferes with the freedom of the people, he crushes their will, and denies to them the exercise of their own wisdom. It is a most absurd and unjust thing for a convention to legislate for the people of Ohio, as they will be ten or fifteen years from now—to anticipate their desires and necessities and give these form and expression now. We cannot understand how reasonable men will insist upon such a course.

It has been stated that not only is the legislature competent to do all this measure proposes, but that we are asked to pass this proposal merely for its moral effect. I have not asked this Constitutional Convention to do a thing that the legislature of Ohio could possibly do. Personally I am in favor of considering every proposal that really requires a change in the constitution, considering it fully and carefully, even if we have to stay here from now until next Christmas, and there should be no curtailment of debate and no haste, no neglect of our work, but with important proposals pending it does seem to me an abuse of our privileges and the misuse of our time for us to spend time here discussing things we all agree the legislature can do, and I think the time has come for us to draw a line and confine ourselves to questions that are truly constitutional questions. There are great big questions before us. Let us turn our attention from these things to those big matters that are still before us. You know what we did yesterday. A motion was made by the member from Cuyahoga to adjourn in the middle of Thursday afternoon and what will be the result? We shall dawdle along until the warm weather and then the big questions that ought to receive the best thought and attention will not receive the consideration they deserve. I think the time has come to call a halt in this matter, to devote our attention to the business before us and do the things that ought to be done. I hope this motion to indefinitely postpone will prevail and the proposal will go on the table where it ought to be.

Mr. BROWN, of Lucas: I sympathize with the member from Richland over the buffeting around that this proposal has been receiving. Anybody who introduces a proposal is entitled to a hearing before some committee. Therefore, I move that this proposal be com-

mitted to a select committee of one composed of the delegate from Richland [Mr. KRAMER] for such consideration and recommendation as he sees fit.

Mr. KRAMER: If you desire to do this thing don't do it for sympathy.

Mr. DOTY: I move that the proposal be laid on the table.

The motion was carried.

Mr. Peck submitted the following report:

> The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 232 — Mr. Doty, having had the same under consideration, reports it back without recommendation.

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

Mr. Peck submitted the following report:

> The standing committee on Judiciary and Bill of Rights, to which was referred Proposal No. 252 — Mr. Weybrecht, having had the same under consideration, reports it back with the following amendments, and recommends its passage when so amended:
>
> In line 4 strike out the word "cases" and in lieu thereof insert the word "manner".
>
> Strike out all of line 5 and in lieu thereof insert the words " as may be directed by law."

The report was agreed to. The proposal was ordered to be engrossed and read the second time in its regular order.

On motion of Mr. Peck, the proposal as amended was ordered printed.

The PRESIDENT PRO TEM: The next business on the calendar is amended Proposal No. 242, submitting an amendment to article IV, section 2, of the constitution, relative to the elective franchise. The secretary will read the proposal.

The proposal was read the second time.

Mr. ROEHM: Mr. President and Members of the Convention: I trust that this Convention will indulge me a little time to present the arguments in favor of Proposal No. 242, first, for the reason that though, like many of you, naturally of a talkative disposition — in fact dearly loving to talk — I have not felt the necessities of the various occasions impelling me to indulge in that favorite and, with some of us, popular, pastime very often and long, upon the floor of the Convention, and, secondly, for the reason that notwithstanding I am not a candidate for either president of the United States, governor of the state of Ohio, congress or any other office (at present) I believe nevertheless that I have something to say which should go into the record, even though it might be said when I have finished, by the gentleman from Highland, that I have said nothing to the point on the matter in issue.

Yesterday a member of the Convention asked me whether I had any stock or interest in any voting machine or company, and suggested that if I had none I had better make that fact known to the Convention. I hesitated to bring this up for the reason that protestation of no material interest often comes from those very much directly or indirectly interested; but nevertheless, gentlemen, I hasten to announce that, fortunately or not, I have no such interest. I had not heard of any opposition to this measure until day before yesterday. It might be opposed on the grounds that this proposal is not of such importance as to deserve the consideration of the Convention, in its endeavor to put a short program up to the people. It certainly cannot be argued that the method of registering and counting the ballots in use at present is up to the times, or within even twenty years of the times, in these days of registering devices and complicated machinery. All know the present system of the ballot can be improved upon, and if it may be improved by the use of machines to a possible elimination of all fraud connected with the registering and counting of votes of the electorate, no one is here who will not consider that this proposal is of such importance that it should be adopted. I will therefore first explain why voting by machines cannot be had under our present constitution.

April 28, 1898, the legislature of this state passed a law (93 Ohio Laws, p. 277), entitled "An act to authorize the use and purchase of voting machines for any and all elections to be held within any city, town or village of the state, and for the appointment of commissioners," which legalized the use of the voting machines at elections. As is usual in all such matters, the city of Cleveland, in its progressive or ultra-radical spirit (take your choice), purchased such machines.

One Karlinger, as an elector and taxpayer of the county of Cuyahoga, city of Cleevland, brought suit in the common pleas court to enjoin the alleged unlawful expenditure of public money and the interference with the free and lawful exercise of the elective franchise by payment out of the public treasury for voting machines, about seventy-six in number, already purchased by the defendants and by the purchase of additional machines and of the requiring their use at elections to be held in said county. (Karlinger vs. The Board, 480.)

This case, Karlanger vs. The Board, through the regular channels, reached the supreme court of the state of Ohio, 80 O. S. 489. There (pp. 489-490) the court spoke as follows:

> It would be interesting to apply this general view (Monroe v. Collins, referred to herein later) of the subject to the legislation in question, but it is quite unnecessary, in view of the definite requirements of the second section of the fifth article of the constitution that all elections shall be by ballot."

The court further says:

> This provision is taken literally from the former constitution of the state, adopted in 1802. In a school for the study of English it might be both interesting and useful to consider the meaning of the word "ballot" in primative times, and the process by which its present meaning has been derived. But when the word was originally used as a part of the organic law of the state the process of derivation had been completed and its meaning in this connection had become plain and understood. It was not doubted then, nor has it ever really been doubted since, that it is a printed or written expression of the voter's choice upon some ma-

terial capable of receiving or reasonably retaining it, prepared or adopted by each individual voter, and passed by the act of the voting from his exclusive control into that of the election officers, to be by them accepted as the expression of his choice. When the phrase was readopted in our present constitution, this meaning of the provision has been illustrated and made absolutely certain by repeated acts of legislation.

After this decision of the supreme court voting machines could no longer be used at elections in the state of Ohio for the reason that the law giving such power had been declared unconstitutional by the supreme court of our state. Hence, if we are to progress in matters relating to the casting and counting of our ballots by machinery it is necessary that there be some constitutional provision which will permit this.

It is needless for me to state that I am entirely in accord with the amendments made in committee as they eliminate some of the objectionable features to the original proposal.

Without referring to the original proposal I will read from amended Proposal No. 242, line 4: "All elections shall be either by ballot or mechanical device or both preserving the secrecy of the ballot."

This language is, perhaps, so plain that it may require no explanation, but should a member desire to ask me any questions upon this sentence, I will try to answer them. It will be observed that voting by machines is not herein made mandatory, but possible only.

The next sentence, "The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device," may possibly require some explanation.

In Monroe vs. Collins, 17 Ohio State, 665, the supreme court had under discussion article V, section 1, of the constitution, which is as follows:

> Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county,township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

The court there said:

> The legislatures have no power, directly or indirectly, to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; and laws passed professedly to regulate its exercise or prevent its abuse, must be reasonable, uniform and impartial.

This same query was made by our supreme court as to the use of the voting machine in Karlinger vs. The Board in language heretofore quoted as follows:

> It would be interesting to apply this general view (Monroe vs. Collins) of the subject to the legislation in question.

In discussing this matter in committee it was thought that in a case, for instance, of the non-partisan ballot for judiciary or of the ballot upon which we were elected to this Convention, which required a rotation in position upon the ticket, or, if by machine, that a question be raised as to whether such provisions were not an abridgement of the constitutional right to vote, and it was thought by the committee that such ballots and voting by machine should be made legal beyond question; and to give the broadest possible scope consistent with the secrecy and protection of the ballot this language was used.

I do not know that it would be necessary in this Convention to discuss the advisability of installing voting machines as an argument for the adoption of this proposal, but it seems to me that the reason why voting machines should eventually be adopted should be discussed at this time, in order that we may bring out the advisability of passing this proposal.

The voting machine can be and should be made available in registering votes, and can be and should be so constructed as to guard, under proper laws, against fraudulent manipulation either by the voter or the election officers, for after the polls are closed the counting and operating mechanism could be automatically locked against further munipulation. There would be no counting of ballots after the polls are closed, as votes for the candidate or upon propositions would be totalized upon a metal counter. They could be made to be economical in that they would avoid large expenditures of money for the printing of the ballots, both for elections and primary elections, and if properly constructed would save the expense of four election officers to each precinct and there would be fewer precincts to keep a machine busy.

We need not here discuss the question as to whether there are any such machines now in existence, but as to their probable or possible existence in the future. It does not require much imagination, and I am sure would not require the invention of any new principle of mechanics, to conceive of the time when voting will be done by machinery, and the vote of the individual be cast secretly and recorded correctly within a short time of the closing of the polls by means of electric appliances, honestly added and totaled in some central locality, so that the result in our larger cities and subdivisions and even in the state and nation could be learned within a few hours.

However, the fact that the adoption of this proposal would make possible an honest ballot and an uncorrupted suffrage is, after all, the big reason for its adoption.

We have been pleased in the United States to boast of our political freedom and the right of the individual in his ambition to be elected to any office in the land, even to the presidency, if he is born an American citizen. Any of us who has had any active part in politics, not only in recent years, but in years gone by, if we have been well informed, knows that it has not always been true in our political scheme that there is equal right of candidates who desire election to various offices. I remember when I was a law student and began to take an active part in political matters—the old days of the mass convention—when the political boss, who was able to name the temporary presiding officer of the convention, had absolute control of the doings of the convention, no matter whether the opponents to him in that convention outnumbered his force three to one, and thus perpetuated himself in power, often against the will of the

people. I remember when they used to haul to primary elections large picnic wagonloads of men from one voting booth to another, each casting his vote according to the dictates of the bosses at each voting booth, thus insuring the election of the candidates whom the bosses desired, for the reason that others would not attempt the same kind of frauds. And if this was not found sufficient the ballot box was stuffed; entirely disabusing the mind of the illusion that the will of the people ruled in such matters.

These frauds in election matters seemed doomed to an end upon the adoption of the so-called Australian ballot and of a system of electing candidates at primaries under the provision of the state law, but in this we were again mistaken, for the reason that fraud and manipulation, while a little more difficult and not quite so wholesale, became even more effective and less likely to be detected. Even on election day the Australian ballot is not proof against corrupt voting. One of the methods is to obtain a ballot, which can be easily done if you know how, mark it in the manner you desire to be voted, instruct the person whose vote is being purchased or supervised to receive the blank ballot from the election officers and retire to his booth, exchange the blank ballot for a marked one in his pocket, vote the marked ballot and return the blank ballot to the person in charge on the outside and receive his reward. A blank ballot is sometimes obtained by perpetrating a fraud upon the election officers. A clever person is procured to vote a sample ballot instead of the official ballot and in this manner obtains a regular blank balot.

By another method, the person whose vote is influenced is made to exhibit (upon the ground that he is unable to properly fold the ballot) to some one in the election booth his ballot after he has marked it in a certain specified manner. If it is seen that he has marked his ballot in the agreed-upon manner the signal is given to the person on the outside and the voter goes out and receives his reward. But fraud at party primaries has been even more bold—such as stuffing the boxes with ballots marked in a particular manner and extracting in their stead other ballots, and such as election officers under the corrupt influence of election boards placing in a ballot box a number of ballots marked in a particular manner and registering the names of a number of the voters of that precinct who did not happen to go to the polls on that day.

A common method of working for certain candidates is for the clerk who is recording the votes to place the marks in the wrong column as the ballot is being called. I have known one case where one candidate had received a hundred and fifty votes while his opponent had received about fifteen or eighteen, and the names on the ballots had been called off properly, but when the results were announced after the ballots were destroyed it was found that the opponent had been credited with one hundred and forty-nine votes and he had received but eighteen. In that instance the judge who called off the ballots raised a kick, but it did not avail for the reason that the ballots had been destroyed.

Another favorite method of working for a particular candidate at regular elections is by the use of a small lead pencil palmed in the hand or hidden in the fingers by one assisting in counting the ballots. By means of the use of this pencil such person can deftly place a mark in front of the name of the candidate he is boosting though the person voting this ballot had intended to vote a straight party ticket of other political faith than this candidate. In this manner I have heard of twenty-five or thirty votes being changed in one precinct,

These are not all the methods of fraud by any means that have been used. A bunch of ballots can be in counting dropped on the floor and another bunch substituted.

All these frauds have been committed hundreds of times since 1892, when the so-called Australian ballot was put into operation in the state of Ohio, to the certain knowledge of all persons who have been cognizant with our political methods. After the counting of the ballots, of course, under our law they are destroyed and the traces of fraud destroyed therewith.

There is still another and by far the most evil method of defrauding the will of the voter, both at elections and primaries, by holding back certain election precincts in which election officers are known and understood to be ready to stand committed to any fraud. In these precincts sufficient changes are made in the tally sheets thereof up to a certain number to decide the election or nomination of the candidate. This method is frequently used in the state of Ohio. Many a man who has really had a plurality of the votes of the electors did not, when the tally sheets were changed and footed up, have sufficient to make him the nominee or the duly elected official.

Thus it will be seen that I do not believe that a certain county in this state stands alone by any means in the matter of election frauds, and I do not believe that the fraud committed in that county, bad though it may have been, is as demoralizing as the fraud committed upon a candidate who was really nominated or elected but counted out, for the latter is a blow at the very foundation of our institutions.

I have enumerated a few methods of fraud under our present system. There may be many others, with which I am not familiar. If you ask me for proof I will tell you that the only proof I need is that it is a matter of common knowledge to the politicians generally in the state of Ohio that these methods of fraud have been used and are being used in elections to this day.

I am quite sure that the people of Montgomery county have heard something of frauds of this kind, and I am equally sure that Montgomery county is no worse in this respect than the average county in the state of Ohio, and for that reason I believe that these frauds have been committed everywhere in the state of Ohio, particularly in the larger cities.

I have sufficient patriotism as an Ohio-born citizen to believe that the state of Ohio is no worse than the average state in the Union in this respect, and for that reason am forced to the conclusion that the elections throughout the United States have not always been the reflection of the will of the people. I know that since the beginning of our government the people have never been sure that their ballots would be counted as they have been voted.

By means of those frauds it is far easier to defeat the will of the people when they are voting upon propositions submitted to them, such as bond referendums. I have

heard that by far the biggest majority of the bond referendums that have been declared carried in various localities in the state of Ohio had really been defeated by the votes of the people.

Further, in all referendum votes, as well as in voting nonpartisan and separate ballots, the blanks actually voted, if counted for or against a certain proposition or candidate (and unless strictly watched it could be easily done), would, in most instances, be sufficient to decide the referendum or the election.

We have just passed a proposal to submit to the people the question whether they want the initiative and referendum. Upon the floor of this Convention during the debates upon that proposal it was said that the people had been deprived of their power by the corruption of the legislature and that the purpose of the proposal was to give back to the people the power they had delegated to their representatives and of which they had been deprived by corruption. There was much said in this debate about the big interests corrupting the legislature and thus thwarting the will of the people. If this be true, and if the initiative and referendum should be adopted, then if the people be not given the power to prevent corrupt suffrage you have merely taken this corrupt influence from the legislature and directed its work on the election machinery of the state. What good can come of this attempt to deprive a corrupt set of men of their power with the legislature by means of any proposal when you have no assurance that the referendum will be properly recorded?

I ask you to take away, not only from the politician, but from the thousands of men who act as election officers throughout the state, the temptation that you have tried to take away from the legislators. Everything that was so ably and eloquently said on the floor of this Convention as to the temptations to which legislators have been subjected could be equally said as to the temptation to which election officers and politicians would be subjected.

I believe I have given sufficient reason to show that this proposal is deserving of the consideration of this Convention and should not be defeated merely to put up a short program to the people.

All I ask of you is to pass this proposal in some form so that the people may say whether or not they desire to make it possible that they may sometime, be it ever so distant in the future, have honest elections.

Mr. HARBARGER: Has there been a decision of the courts against the use of machines?

Mr. ROEHM: If the member from Franklin [Mr. HARBARGER] had listened to the early part of my argument he would have seen that the supreme court in Karlinger vs. The Board had decided that the voting machine could not be used in our elections, that the act legalizing them was null and void.

Mr. HARBARGER: Where are the machines made?

Mr. ROEHM: I do not know. I suppose there are a dozen of them.

Mr. HARBARGER: Are any of them made in Dayton?

Mr. ROEHM: I knew there was one being worked on down there. I did not know there was a machine made in Dayton until after I had introduced this proposal and it was on the calendar. I don't know whether that is made in Dayton, but a Dayton man is interested in it.

Mr. CUNNINGHAM: During the progress of the voting what is the danger that the machine may get out of order and refuse to work at all or work badly?

Mr. ROEHM: I do not know and I do not think that is a question that the Convention need concern itself about, because there is a possibility of making a machine that will not get out of order easily. Take almost any recording machine, it may get out of order once in a while, but it is almost a perfect piece of mechanism. It is not for the purpose of permitting any of the present machines to be used, but simply to make it possible that a perfectly secret and correct counting of ballots can be had.

Mr. CUNNINGHAM: That is the pertinency of my question, to know whether that machine will produce perfectly accurate results.

Mr. ROEHM: It has been done. Other states have satisfactory machines, but not perfect machines in my opinion.

Mr. PECK: I heard it worked to the great satisfaction of the people of New York.

Mr. ULMER: There is no great principle involved in this proposal. It simply will permit any community that desires and that can find a perfect voting machine to buy it and install it. It is optional with the people. There is no reason why we should lose much time over it. People don't have to use it if they don't want to, and they can investigate it before they buy it. Therefore, as a few of the gentlemen here are compelled to leave soon to catch their trains and we expect to vote, I move the previous question.

Mr. ROEHM: I demand a call of the Convention.

The PRESIDENT PRO TEM: The call of the Convention is demanded. The sergeant at arms will close the door and the secretary will call the roll.

The roll was called, when the following members failed to answer to their names:

Beyer,	Farnsworth,	Mauck,
Brown, Highland,	Farrell,	Miller, Ottawa,
Cassidy,	Fess,	Norris,
Cody,	Harris, Ashtabula,	Nye,
Crosser,	Harter, Stark,	Okey,
DeFrees,	Henderson,	Peters,
Donahey,	Hoskins,	Price,
Doty,	Kerr,	Redington,
Dunlap,	Kilpatrick,	Stalter,
Dunn,	King,	Stamm,
Dwyer,	Leete,	Tallman,
Earnhart,	Malin,	Wagner,
Eby,	Marriott,	Wevbrecht,
Elson,	Marshall,	Worthington.
Evans,	Matthews,	

The president announced that seventy-five members had answered to their names.

Mr. ROEHM: I move that all further proceedings under the call be dispensed with.

The motion was carried.

The PRESIDENT PRO TEM: The question is, "Shall the proposal pass?

The yeas and nays were taken, and resulted—yeas 69, nays 10, as follows:

Those who voted in the affirmative are:

Anderson,	Holtz,	Read,
Antrim,	Hursh,	Riley,
Baum,	Johnson, Madison,	Rockel,
Beatty, Morrow,	Johnson, Williams,	Roehm,
Bowdle,	Jones,	Shaffer,
Brown, Lucas,	Kehoe,	Shaw,
Campbell,	Keller,	Smith, Geauga,
Colton,	Knight,	Solether,
Cordes,	Kramer,	Stevens,
Crites,	Kunkel,	Stewart,
Cunningham,	Lambert,	Stilwell,
Doty.	Lampson,	Stokes,
Elson,	Longstreth,	Taggart,
Fackler,	Ludey,	Tannehill,
Farrell,	McClelland,	Tetlow,
Fluke,	Miller, Crawford,	Thomas,
Hahn,	Miller, Fairfield,	Ulmer,
Halenkamp,	Moore,	Walker,
Halfhill,	Partington,	Watson,
Harris, Ashtabula,	Peck,	Winn,
Harris, Hamilton,	Peters,	Wise,
Harter, Huron,	Pettit,	Woods,
Hoffman,	Pierce,	Mr. President.

Those who voted in the negative are:

Beatty, Wood,	Davio,	Fox,
Brattain,	FitzSimons,	Leslie,
Brown, Pike,	Harbarger,	Smith, Hamilton.
Collett,		

So the proposal passed as follows:

Proposal No. 242—Mr. Roehm. To submit an amendment to article V, section 2, of the constitution.—Relative to elective franchise.

Resolved, by the Constitutional Convention of the state of Ohio, That a proposal to amend the constitution shall be submitted to the electors to read as follows:

All elections shall be either by ballot or mechanical device or both preserving the secrecy of the ballot. The general assembly may regulate the preparation of the ballot and determine the application of such mechanical device.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. RILEY: On the seventeenth day of January Proposal No. 15 was presented by myself to the Convention and two days later was referred to the Judiciary committee, which has made no report. Under the rule, I call for the return of that proposal to the Convention.

The PRESIDENT PRO TEM: Proposal No. 15 is called up under the rule.

Mr. PECK: I want to say in justification of the Judiciary committee that it is not due to want of consideration that the proposal has not been reported. There was a good deal of discussion in the committee on the proposal, but we never were able to agree upon a report.

Mr. RILEY: I have not called this up this afternoon with the idea of compelling the grips to stay in the cloak room. I have an amendment to offer to this proposal myself which is intended to modify it somewhat and I think I can have the amendment ready in proper shape by the time we meet again.

The PRESIDENT PRO TEM: The gentleman moves that the proposal be engrossed and placed on the calendar in its regular order.

The motion was carried.

Indefinite leave of absence was granted to Mr. Dunn and Mr. Marriott.

Leave of absence for next week was granted to Mr. Tallman and Mr. Nye.

Leave of absence for Monday and Tuesday was granted to Mr. Keller.

Leave of absence for Monday was granted to Mr. Kramer, Mr. Stamm and Mr. Johnson, of Madison.

Leave of absence for the remainder of the week was granted to Mr. DeFrees.

Mr. FARRELL: I move that the Convention adjourn.

The motion was carried.