

MR. BARTLETT: I am sure as long as you and Judge Scileppi sat on that court we would have no fear.

I wonder if the amendment ought not to address itself to the application of the article, or better yet to the application of Subdivision C which specifically deals with the ownership of property or any other qualifications. It seems to me that—

MR. BERGAN: That's been raised, but Subsection C is very limited in its scope, as you know, and it deals in a certain way with a particularly limited problem, and the choice of where you put it—I thought that A would be better. I think this needs redrafting, and I am sure when we get all through with it it will need redrafting. The only purpose of these amendments is precautionary, really.

MR. BARTLETT: I don't know whether courts pay any attention to Convention intent as they usually do not to legislative intent, but it seems—

MR. BERGAN: We search very hard sometimes.

MR. BARTLETT: It seems to me we are all in total agreement. I say we all, a number of us are in agreement that it is intended that the suffrage article apply to school district elections, especially as it relates to property qualifications, but I think the 30-day residence in an election district provides a problem, because we don't have any—

MR. BERGAN: Is this really a problem?

MR. BARTLETT: It seems more a problem to me when the amendment immediately follows the definition of residence, the period of residence in the district.

THE PRESIDENT: Mr. Cusick.

MR. CUSICK: Judge Bergan, before you sit down would you yield for a hypothetical question?

MR. BERGAN: Yes.

MR. CUSICK: Assuming, Judge Bergan, that your amendment prevails, and assuming that the Legislature in its wisdom reduces the voting age to 18, would it be possible for an 18-year old resident of a school district who is a non-property owner to vote on a school budget?

MR. BERGAN: Yes, it would be.

THE PRESIDENT: Any further discussion on this proposed amendment?

Judge Sobel.

MR. SOBEL: I am very much confused. Everybody here seems to believe that Section 1 qualifications of voters does apply in fact to a school district except for Judge Bergan and he thinks he needs an extra precaution. Well, I point out that if the Chairman would only rise and say it is the intent of the Convention that this does apply to school districts, that would end it, because the minute we put an exception in we indicate that we are in doubt as to whether it applies to all other subdivisions of the State, that is with respect to the—will you go ahead and I will speak on the other later.

THE PRESIDENT: Mr. Tyler.

MR. TYLER: Mr. President, I was trying to get your eye. I confirm the prior speakers who have indicated that it was the intention of the committee to make this article apply to school district elections.

THE PRESIDENT: Any further discussion on the proposed amendments?

MR. SOBEL: May I speak on the second half of the amendment? It seems to me, Judge, you are doing exactly by your change what the section now provides. I can't see any possible change at all. There would never be a bipartisan board sitting on the school district election and this is precisely what the language does say now.

MR. BERGAN: If you are reading the section the way it was, it doesn't say this, it doesn't require this, but it leaves it sufficiently in doubt. It reads this way: "Except that such equal representation shall not be required in a village, school, or special district election where candidates of either of such political parties were not on the ballot at the preceding village, school or special district election." These double negatives leave it sufficiently in doubt to leave a doubt. We want to make it perfectly clear it is not the intention of this Convention to require that we have bipartisan Boards of Elections in school districts.

MR. SOBEL: Would you be good enough to leave that to Style and Arrangement, and I will bring it up at the next meeting and try to clarify it.

MR. BERGAN: I prefer to have it spelled out today and let Style and Arrangement straighten it out in due course.

THE PRESIDENT: Mr. Mankiewicz.

MR. MANKIEWICZ: I speak as secretary of the Education Committee and also as secretary of the Style and Arrangement, and the members will notice that I sit next to the Chairman of the Bill of Rights Committee. Given that set of facts, I would make this promise to the members of the Convention, and I know I will have the support of all these committees, that Judge Bergan's amendment to me plainly means that there shall be neither property qualifications nor participation by political parties in the election boards of school districts, and that when this matter comes before you on third reading that Bill will say precisely that and nothing more, insofar as the Bergan amendment is concerned, and I commend it to you as an excellent amendment.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: In line also with Delegate Mankiewicz, may I explain to some of the members, because there seems to be some slight misunderstanding, that this proposition after we have accepted Judge Bergan's amendment will have to go to the Committee on Style and Arrangement, where it will then come back to the floor for a third reading, at which time we will have the opportunity of seeing the entire proposition, not with all the pieces we have tacked on, or taken off, and you have your same rights as you had today.

I would therefore recommend, Mr. President, that if we are so inclined, we pass it, bearing in mind, as a lawyer would say, that I reserve my rights to a further cross examination when it comes back for further reading.

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor, indicate by saying aye; all opposed no.

The amendment is adopted.

Mr. Mangano.

MR. MANGANO: Mr. President and members of the Convention, I seem to be the perennial good-wisher. I observe by the biographical document that is issued by this Constitutional Convention that today is celebrated the birthday of a distinguished member of our body, a man who has served as the Chairman of the Board of Assessors of the City of New York, a lecturer at the Brooklyn College, and a Professor at the New York Law School. He has been an outstanding citizen of our community and I understand that he has reached the

age of 60. If I had the ability and the capabilities of poetic abilities of the great and distinguished former Justice or Chief Justice of the Court of Appeals, I would say it to him in poetic form. But I just simply express the sentiments and wishes of this body and extend them to you, Commissioner Harvey Strelzin, a happy birthday.

THE PRESIDENT: The Chair extends its felicitations and best wishes.

(Applause)

THE PRESIDENT: Mr. Burns.

MR. BURNS: Mr. President and ladies and gentlemen of the House, I was hopeful that I might be privileged to say a few words and to offer an amendment following Judge Bergan, and in the same line of my discussions yesterday, that I intended to offer an amendment, and I don't intend to make this too lengthy because I think the explanation is fairly simple, and I would also say that I was persuaded by Mr. Weinstein, who I think offered some measure of clarity, maybe a few of these things might be placed in for the third reading for further discussion, but Mr. President, and ladies and gentlemen, there are a number of statutory provisions now in effect regarding the requirement of ownership of property for certain purposes. Now I would believe that an inclination is very evident that to change some of those qualifications regarding the ownership of property, as a matter of fact, to liberalize the qualifications generally for voting, and certainly, we have had enough discussion here during the past couple of days on that. However, just because there are certain basics built into our present system, and also because there is in my judgment some requirement still to remember, that while the present voting age is 21, that the Legislature, if the people were to approve the present article as was amended yesterday, that is to say, the Legislature, itself, could change the voting age, it seems to me there ought to be some kind of constitutional authority for the Legislature to require property qualifications under certain circumstances.

Now, I will read directly from a short memorandum because my amendment, which I will be pleased to hand up, simply says—it is a new section D, follows C—we were talking about A, B, and C, and now D, would say simply: “Notwithstanding the foregoing provisions of this Section, the Legislature may require the ownership of real property as a qualification to vote upon questions for raising, appropriating, or expending monies.”

Now, ladies and gentlemen, at the present time, the town law, Section 84, includes a property qualification for voting on propositions raising, appropriating, or expending money, incurring any town liability, and on the sale or other disposition of town real property. Propositions with property qualifications include those on special districts, special improvements and many general town improvements, as well as bond issues subject to referendum.

Additionally, village law Section 402 includes a property qualification to vote on any proposition. This would include propositions for expenditure or borrowing of money, and the provisions of some services, as well as structural changes.

There apparently is no similar requirement in the county law or in the general city law. But it is quite probable that many cities have property qualifications in their charters. This amendment which I am proposing, Mr. President, would authorize the property qualifications on any propositions requiring—and I am quoting now—“The raising, appropriating or expending of money,” and thus would include special assessments as well as tax levies and bond issues.

Now, my memo went on to say that it wasn't clear as to whether the proposed Article—as this was written—would apply to schools, and Judge Bergan has submitted a proposition by way of clarity with the intention that it should. So saying, let me make just a couple of additional comments, because I think that this strikes at the element of fairness.

I was persuaded earlier by having this Article, let's say, level out to some extent, by Dr. Harrington, who made references to withdrawing in areas of the definitions which were previously clarified to some good extent by Mr. Rooney.

I say that this Convention must look objectively to some of the practical sides of the effect of changes as they may result from our deliberations and decisions.

Very frankly, ladies and gentlemen, there is the element of experience, the manner in which programs have heretofore been accomplished. I know of no instances where the will of the people on a sound proposition did not at least ultimately result in the obtaining of the sound proposition.

I say to all of you that these provisions in effect make for some compromise in property qualifications for other areas. I would suggest to you that the Public Officers Law might well address itself to this question which again is an aside to the right to hold office, but I am addressing myself simply and purely on the basis how this change in this statute might affect certain parts of our existing structure.

I would say simply that the manner in which the present requirements do work—I have had some experience at the various levels of local government—but, for example, in certain of the town operations of the towns relating to special district programs, special districts are not local government, special districts are arms of towns, special districts perform definite services, special districts are a good device for providing people, perhaps a portion of the town, with a service. Now, if the special district requires certain additions to plant for certain purposes, then there is the requirement that the Town Board, absent commissioners, Town Board acts as a district but their actions are always subject to the property owners' bringing forward a petition to check the wisdom of such an action. In certain of the village areas, I said before, this area of being subject to a permissive referendum, what it is simply is a check and balance. If there is confidence in the local government official body, my experience has shown that very few times are permissive referendums, for example, called for, yet the people always have the confidence.

Let me say finally, it seems that giving the Legislature the power to change existing statute or to impose property qualifications is a good thing because if there is a case in which the voting age is reduced, as Judge Bergan said it was their intention it might be, and this applies to school districts, it seems to me, if the Legislature in its wisdom reduced the voting age to eighteen, they might, and this permission would permit that there be a restriction against eighteen-year-olds, placing a burden upon that school district, because they could, of course, they are residents, yet I think at this point even though I would still say eighteen-year-olds ought to have a full adult requirement in all respects, it seems to me that the permission ought to be in this Constitution to make that possible. This in no way mandates anything, except there is a permissive element placed in the Constitution which says the Legislature may impose certain qualifications in certain instances. To make it very easy, all the property owners of a special district, as a special assessment, for example, a special assessment is something that is a burden and is placed upon the property and then for years after the special assessment is worked off. Now, of course, it increases the value of the property but it also imposes a burden, and if we are liberalizing the manners in which people may vote, if we are taking the age down, for example, and that can come, if we are liberalizing other aspects of this voting program, it does stand to reason, then, that the property owners in certain instances that the Legislature in its wisdom could require, might well deserve and should receive the protection which those who own property upon which this burden would be placed, should be protected.

I think this is an element of fairness.

Let me read briefly from the third section of the Temporary Commission booklet on local finance. I will read one brief section: "The localities of many states,

including New York, have been authorized to impose a variety of non-property taxes to help finance their expenses. The property tax nevertheless still dominates the local tax structure. In 1965 it provided 87% of local tax revenues in the nation, and in New York 75% of the revenues—of the tax revenues. New York City in that year derived only 61% of its local tax revenue from property tax but elsewhere in the state—” and I repeat, “elsewhere in the state the localities received 94% of all their tax moneys from it.”

Now we know that real estate taxes are a burden in many areas. I am not so sure, Judge Bergan, that this may not enter into the discussion further as far as, let's say, capital investments or taxes as far as schools are concerned, because we do have a little different program with massive amounts of state aid for construction as well as operating, but I bring it back to the requirement to vote on money spending programs in local governments where local governments do include school districts, and I say again this does not freeze any program in.

We are not so sure as we stand here today, and this has been my difficulty as I talked yesterday, I hope with at least some persuasiveness somewhere, if only to prepare for this kind of a program in this article, but I am convinced that we can't continue to vote, to approve things or disapprove programs or to change without knowing what change may come. And so it is my strong recommendation to this Convention today to place in this proposition at second reading the simple statement, which I again shall read for emphasis, because I want to emphasize that this is entirely permissive: “Notwithstanding the foregoing provisions of this section, the Legislature may require the ownership of real property as a qualification to vote on questions of raising, appropriating or expending money.”

In my judgment I think this is entirely fair and I hope it prevails.

MR. BEAME: Will the Commissioner yield?

MR. BURNS: Of course.

MR. BEAME: Mr. Burns, do I have the right interpretation of what you are proposing, that the Legislature may pass a law prohibiting the people in the City of New York, for example, or in Buffalo, from voting on the bond issue of the 2.5 billion for transportation, for example, unless they are property owners?

MR. BURNS: No. I am suggesting—I am suggesting, of course, the Legislature might have powers, they would have to put in a property qualification, I would suggest however, Mr. Beame, that I would think for a statewide referendum it would be most unusual for the Legislature to make this.

MR. BEAME: Maybe unusual, but the only point I want to make is that your provision permits that. If there is anything in my judgment the Legislature should be restricted on, it is to take away the right to vote or prohibit anyone from voting.

MR. BURNS: I would say generally, Mr. Beame, the Legislature is faced with some extremely difficult problems in prospect. The Legislature must find new ways of raising money and the Legislature must decide that some of those functions of government now might be changed from where they are being provided to someplace else.

I would say to you, sir, that in all the areas of limits, tax limits and debt limits, I really believe that an intelligent discussion even on that will have to wait until we see exactly where the functions may be placed.

Let me say to you also, and I didn't mention this before, that if there are to be continued some tax limit provisions, Mr. Beame, and there is no property requirements under certain circumstances, we could have folks even voting to increase the tax limit, such as in the case of city school districts under the

125,000 right now, to increase the debt limit, to increase the tax limit and not have any property qualifications required.

Now again I am mindful of the liberalizing of voter participation and qualifications. I say to you only that there is a body in law which does now require—and I am ignoring all those things outside the area of money—I do think the people will look to us for some protection and feel this protection is what the Legislature shall decide to retain, or in its wisdom to further impose.

MR. MANKIEWICZ: Will the delegate yield?

MR. BURNS: Yes.

MR. MANKIEWICZ: Commissioner, suppose that your amendment were enacted and that the Legislature then passed a statute using the exact terms of the amendment—I don't have it before me, but those terms would be substantially that there is hereby enacted a requirement that in all elections involving the levying of a tax or the imposition of a debt, no person shall vote who does not own real property to the value of \$100—they could surely do that, in fact, they would be taking advantage of their constitutional authority, my question is if they did so would not the exact situation pointed out to you by Mr. Beame arise, that is, on a statewide election some people would be eligible to vote on some questions—

MR. BURNS: Let me say this by way of responding to you. In the first place, Mr. Beame, we couldn't exclude the City of New York—

MR. BEAME: May I—

THE PRESIDENT: Just a moment, Mr. Burns has the floor. Mr. Mankiewicz and Mr. Burns would you yield?

MR. MANKIEWICZ: Yes.

MR. BEAME: I didn't necessarily point up my observation because of the fact that I was talking about New York City, I pointed it up with respect to anybody who doesn't own property anywheres in the State, and of course I would imagine the bulk of those people would be within the cities, and for that reason I indicated that they would be deprived of the right to vote.

THE PRESIDENT: Mr. Mankiewicz?

MR. MANKIEWICZ: Mr. Burns is replying to my question.

MR. BURNS: Mr. Mankiewicz, I believe I am responding really to what the two lines, eleven and twelve, of 700-B presently say. It says, "Neither the ownership of property nor any other qualification or test shall ever be required for voting at any election in this state."

MR. MANKIEWICZ: To which you would add the word "notwithstanding"?

MR. BURNS: I would. I would say "notwithstanding the foregoing provisions the Legislature may require ownership of real property as a qualification to vote on money matters."

Now we can go on and on and say cities and towns and villages and districts, but what we are getting at is this new provision does disregard—I will put it in that area—a body of statutory law which is now in my judgment working successfully, but I characterize my suggestion as a compromise because I simply say that what—well, when we finish with the Constitution and as it may be approved by the people there are going to be changes in the statute, the extent that the Legislature may retain, and I am simply saying this, that the special district assessment program has worked well and people who have owned property and have had a chance to speak if they so desire. The present re-

quirements in villages have worked well as to actions of the village board and permissive referendum, and all I am saying is there ought to be a permissive aspect placed in the Constitution which would enable a continuation of the things that have worked with a lot of experience, and let the Legislature make such changes as they deem desirable as time goes on.

MR. MANKIEWICZ: I consider your answer to have been Yes.

MR. ST. LAWRENCE: Will the Commissioner yield to a question?

MR. BURNS: Yes.

MR. ST. LAWRENCE: Commissioner, would this mean that a sewer district, where they wanted to form a sewer district in a local unit of government, that only the property owners in that district could vote?

MR. BURNS: Yes, Mr. St. Lawrence. The present law provides that special district, special assessments—I am saying in the spending of money, the organizing of a district in the first instance might not require the expenditure of money and there would be no property qualifications under that circumstance. But if there was to be an imposition on that district now for an extensive new construction, the people who are going to bear the burden ought to have an opportunity, in my judgment, to make a judgment on this suggestion. You talk in terms of a sewer program. Don't forget the pure waters.

MR. ST. LAWRENCE: That was one of my bills two years ago, but I would like to say, Commissioner, does this mean with the present trend where the State of New York is giving state funds for the development of sewer treatment plants and sewer districts to the local communities to enable them to go into the program of bonded indebtedness, that would not be too much of a financial threat? Does this mean the people who pay income taxes to the State of New York now would not have the right to vote for moneys which they are supporting in a sewer district?

MR. BURNS: No. No. Actually, Mr. St. Lawrence, you are familiar with the extensive amounts of money made available by Federal and State to support the pure waters program in this state. Now, the pure waters program depends on new construction for forty per cent of the total amount of the improvement, and that forty per cent comes from the properties in the area.

I would say to you that when the people of this great state approved a billion dollar bond issue for pure water, to cost \$1.7 billion, the \$700,000,000 was the amount that had to come from local sources, which local sources, Mr. St. Lawrence, is the real estate.

All I am saying is that—I am not suggesting, nor do I like particularly to be pinned on a specific, because I don't want to answer that question, I want to answer it in the sense that the Legislature ought to be able to either make them do that or they ought to be able to take them off this if they like.

MR. ST. LAWRENCE: Your answer to that would be Yes, then.

I would like to say also, this is a matter of fiscal policy that I would like to say now, speaking in terms of philosophy of government, Senator Greenberg and Senator Dominick and myself had legislation introduced this past year to remove by statute the right of a property qualification for holding public office, and I believe that two of them are about the same.

Two years ago we were able to get that through the Assembly and through the Senate and it was vetoed by the Governor.

I would like to be very brief here. I think that the principle is wrong. I think that it is a bad proposition because of a defect in the rights of all citizens to participate in their government, and I say that this "may" imply right, and I think to put it in the Constitution would be wrong.

MR. BURNS: I will respond to your question. I am mindful of your position. I would say to you respectfully, sir, that there are those who encouraged me to make the word "shall" and I was trying to continue a proven and tested program.

Mr. President, you know we have a fragmented article before us, and I do want to save the time of the House. In view of Mr. Weinstein's previous suggestion that we watch carefully Mr. Bergan's amendment, I am going to withdraw my amendment at this time, reserving the right to bring it back on third reading. I think it is important enough for this House to make a change in that article, but I say it only because of my interest. I think there are substantial reasons why this House should adopt the amendment. I withdraw the amendment at this time and respectfully request I be given time, if I may, at the third reading.

THE PRESIDENT: The Chair recognizes Judge Walsh.

MR. WALSH: Mr. President, for the purpose of amendment, I request unanimous consent to call up my proposition, No. 139-A, now on the order of second reading, but not on the calendar.

THE PRESIDENT: The Secretary will read the title of the bill.

THE SECRETARY: By Mr. Walsh, a proposition to amend Article I of the Constitution in relation to the right of suffrage.

THE PRESIDENT: Without objection, the bill is before the House.

MR. WALSH: Mr. President, I offer the following amendment, move its adoption, waive its reading, and will explain said amendment.

Mr. President, the purpose of this amendment is to—

THE PRESIDENT: May I interrupt you for a moment? For the benefit of the members, the proposition that Judge Walsh is referring to is one that was reported out of committee, but is not on the calendar. Judge Walsh is seeking to advance it today so that he can offer this amendment and have it go on the calendar next week sometime. It is only a matter of speeding up the printing, otherwise, it couldn't be printed until after—

MR. BRYDGES: That is by complete agreement.

THE PRESIDENT: Therefore, you don't have to explain the amendment, Judge Walsh, because when it comes back, it will be reprinted, and it will be before us. If there is no objection, the amendment is received and adopted.

The Chair recognizes Senator Brydges.

MR. BRYDGES: Mr. President, I move that we stand in adjournment until next Monday at 2:00 P.M..

THE PRESIDENT: Without objection, so ordered, may the record show that the amendment offered by Mr. Burns was withdrawn.

MR. WEINSTEIN: Mr. President, may I call the Democratic majority's attention to the fact that next Monday, though the session opens at 2:00 P.M. on the 24th, there will be a conference of the majority at 11:00 A.M. in the Assembly Parlor.

(Whereupon, at 5:10 P.M. the Convention adjourned to Monday, July 24th, 1967, at 2:00 P.M.)

MR. C. RICE: Mr. President.

THE PRESIDENT: Mr. Rice.

MR. C. RICE: Mr. President, I would like to express my appreciation to the

people of the 33rd Senate District, to those who worked in our campaign, and to my fellow delegates, Frank J. Mastandrea and William J. Drohan. At this time I particularly desire to express my thanks to Mr. James J. Leff, the attorney on my behalf whose determination and matchless skill made possible the special election in which I was elected. Mr. Leff and his family are present in the gallery at this time.

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**MONDAY, JULY 24, 1967**

**THE PRESIDENT:** The Convention will come to order. Will the Delegates please assume their seats?

The Sergeant-at-Arms will please call the offices and tell the Delegates to come down to the Chamber.

**THE REVEREND LAMAN BRUNNER:** Vouchsafe, O Lord, to the members of this Convention to whom the affairs of this great state are committed, prudence, justice and wisdom that they may be of one mind and one heart in the upbuilding of this great commonwealth and in the spread of truth, in the name of Almighty God. Amen.

**THE PRESIDENT:** The Secretary will call the roll.  
(Whereupon the Secretary called the roll.)

**THE PRESIDENT:** Mr. Weinstein.

Mr. President, may the record show that Delegate Dubinsky is ill and is unable to attend, and that Delegate Ughetta, Delegate Ramirez and Delegate Blossom G. Saxe are unable to attend.

**THE PRESIDENT:** The record will so note. The Secretary will read the Journal of the Proceedings of Wednesday, July 19th.  
(The Secretary reading)

**THE SECRETARY:** In the Convention on Wednesday, July 19, 1967—

**THE PRESIDENT:** Mr. Weinstein.

**MR. WEINSTEIN:** I move that we dispense with the reading and that the same stand approved.

**THE PRESIDENT:** Without objection, so ordered.  
Calendar of the Day. Propositions on the order of second reading.

**THE SECRETARY,** (reading) Proposition No. 805-A, Calendar No. 1, Committee on Judiciary.

**THE PRESIDENT:** At the request of the Chairman of the Judiciary that will go to July 31. He is ill today.

With reference to the next four propositions that are on the calendar, I trust that the delegates have kept copies of these proposals in their desks, as I suggested several weeks ago, because they are now out of print.

The Chair recognizes Mr. vanden Heuvel.

**MR. vanden HEUVEL:** Mr. President, in the long history of Constitutional Conventions, many precedents have been made and some few traditions have been broken and in the course of our deliberations I presume some new paths have been trod, but I would like to take this occasion to cite a historical incident of this Convention and to pay tribute to the gentleman who has led the way.

Never in the course of the nine Constitutional Conventions that this State has had has any delegate had, out of the many, either the temerity or the courage to leave this Convention Hall to take on a new responsibility such as marriage, but in this Convention a precedent has been set and a delegate has done that. I don't know the reasons or the considerations that led to his decision, Mr. President. I have sent him various quotations and poetry both before and after the event to reassure him. I gave him the lines of Shelley, who said that "A system could not well have been more devised, more studiously hostile to human happiness than marriage." I sent that to him before the marriage.

And then I thought that some words from St. Jerome might be helpful to him, who said, "Matrimony is always a vice. All that can be done is to excuse it and sanctify it. Therefore, it was made a religious sacrament."

Having given our distinguished colleague that advice, I find he nevertheless proceeded to the altar: and I am sure that all of us join with me today in wishing him and his bride, Mr. and Mrs. Samuel Nachwalter, our colleague Jack, many, many years of health and happiness together. (Applause)

MR. BRYDGES: Senator Brydges.

MR. BRYDGES: May the Delegate be excused for the usual two weeks.  
(Laughter)

THE PRESIDENT: I'm afraid I will have to rule "No" on that one, but the Chair adds its voice to the felicitations expressed and we wish Mr. Nachwalter and his new bride many years of happiness with good health and good luck.  
(Applause)

THE PRESIDENT: The Secretary will continue with the call of the calendar.

THE SECRETARY: (Reading) Proposition No. 1334, by Committee on State Finances, Taxation and Expenditures: A proposition to insert a section in the article on taxation in the proposed constitution, in relation to taxation of banking corporations.

THE PRESIDENT: Ready?

MR. GREENBERG: Ready.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Proposition No. 1335, by the Committee on State Finances, Taxation and Expenditures: A proposition to insert a section in the article on taxation in the proposed constitution, in relation to taxation of intangible personal property.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: Mr. President, I am going to ask that this proposition be laid aside for a few days, but before doing so I think the time has come for me to say a word about this proposition because of the unnecessary, uncalled-for and unjustified hue and cry which we have been hearing in recent weeks from all parts of this great State.

It is true that the proposition before us is one which continues the prohibition against taxation of intangible property of non-residents just as it is found in today's Constitution. However, in that same section of the Constitution today there is another sentence which refers to the non-taking of intangibles of residents; with this latter subject we have not yet reached the point where the committee is able to make its report, and there are good and substantial reasons why we have not been able to do so, and I am going to try and give you an idea.

The question of intangibles is found in Section 3. In Section 1, however, all of Article XVI, we have the second sentence or second paragraph, rather, of

Section I which deals with the question of tax exemptions of both real and personal property which, of course, includes intangibles with respect to religious, charitable and educational institutions.

Now, because it was the consensus of thinking—not necessarily unanimous, but the consensus—that in this area with respect to these kinds of institutions, that we should make clear in the language what we propose for adoption by this Convention, that in no way, shape or form are we taking away anything which we now enjoy; and because that is involved in the consideration of the question of intangibles with respect to residents and particularly corporations generally, we have moved slowly and, believe me, we have been working—by “we,” I mean the staff and myself—working with everyone concerned with the substance of this section.

And let me tell you something, ladies and gentlemen. There is disagreement in the minds of those who represent these three kinds of institutions as to what they enjoy under today’s Constitution and statutory law, so that you can readily understand the problems and the difficulties of this committee resolving it. But what do you think has happened?

We had no complaints from anybody, including the news media, which to a very substantial degree is responsible and has been responsible for incorrect newspaper reporting, the drawing of inferences which were entirely unwarranted, but I must say perhaps engendered by a gentleman who heads a very substantial department of this State with whom I am on very, very friendly, intimate terms, and he is a very decent gentleman. But instead of his coming to me, or whoever the Chairman of this Committee may have been, and saying, “Gentlemen,” or, “Sir,” or, “Sam,” if you will, as he is wont to call me, “What are you doing about intangibles of residents?” And he would have been told what we are doing—instead of doing that, gentlemen, what he does is, he writes a letter to me about which I read before I received it—which is not unusual—in some circles it has happened before; but the fact of the matter remains that early in the history of this Convention the President requested of every department head recommendations—we, I,—the committee of which I am chairman—asked and invited the heads of departments, including this one, to come and testify.

No, no. All we got was a perfunctory letter from several sources indicating that each department head was going to wait until His Excellency, the Governor, would come up with his recommendations and then eventually we would receive these papers dealing with this, that and the other subject.

Now, I don’t know what the other committees have received, but I know that the Committee on Finance has not received a single recommendation from any department head. The trouble is, Mr. President, and ladies and gentlemen, that too often there are some of us who just forget to do our homework. And when a well-seasoned reporter for one of the two morning newspapers in the City of New York, in connection with a story in today’s paper that has to do with yesterday’s broadcast or television program makes this statement—and I am reading from the New York Times of Monday, July 24—“on the calendar: First items of the week are completing the voting rights articles and consideration of a proposal to permit a State tax on intangible personal property, such as deposits in savings banks.”

Now, the fact of the matter is that the article, the proposal before us, does not in any way, shape or form permit any such tax. Sure, if we quit here on September 26 and don’t continue, the section which is now in the Constitution, or one substantially in agreement with it, then, of course, then there would be no prohibition against the Legislature proposing such a tax. But that certainly is a far cry, in my opinion, from saying that the proposition before us does emphatically, or straightforwardly permit the imposition of such a tax, and that is the same error into which the head of this department has fallen, as I read the letter which I received from him.

Well, it is in the letter. I can't find it. Oh, here it is: "It would, for the third time, permit the state to tax—" no, that is another one. Well, it is in there.

Mr. President, ladies and gentlemen, I think it is wrong for any of us to draw inferences from the fact that a sentence or a section is not included in a particular proposal until such time as we know, one way or another, whether that is the end of what the committee is going to report out.

Now, I started to say earlier, in section one of the same article, the very first paragraph is found in one of the proposals before us, No. 70 on the calendar.

The second paragraph of that section is the one that provides for the exemptions of real personal property of these institutions. None of these institutions complained that we were putting out something which would permit their taxation. None of them wrote me and said, "Mr. Chairman, what are you doing?" They knew we were deliberating, they knew we were studying, they knew enough to come and see us and talk to us. But not so with the giants of industry, very, very few of whom came to the public hearings and testified, and all they had to do, gentlemen, would be to make a telephone call and they would have gotten the answer and gotten it straight.

As far as I am concerned—and I believe I can speak for the committee now,—we will come out with a proposal which will continue the prohibition against taxing intangible personal property, as it refers to residence, be they individual or corporate, and as to educational, charitable and religious institutions, and I hope and trust that it will be favorably received and that it will eventually pass and be part of our final work. I hope also that my friends and the press, and the news media will not make unwarranted, unnecessary deductions or inferences, without at least calling me and asking me. They know where I am and they are never ashamed to ask me if they want to know something, and I think everyone of them will agree that I never hesitate to give them a straight answer.

Mr. President, may this be put over until Wednesday of this week?

THE PRESIDENT: July 26.

MR. GEORGE W. CORNELL: Mr. President, may I speak briefly along the same line with reference to this motion to put over?

THE PRESIDENT: Without objection, Senator Cornell.

MR. CORNELL: I have heard Senator Greenberg speak with reference to this question and I just want to call attention to what the facts are, as I believe the members of the Press saw them. This proposition, No. 1335, starts off with a heading: "Taxation of intangible personal property." In substance, it copies the first part of Section 3 of Article 16, which again relates to intangible personal property and the taxation thereof, but specifically omits this language. "Intangible personal property shall not be taxed ad valorem, nor shall any excise tax be levied solely because of the ownership or possession thereof," and so forth. Now, this was part of the same paragraph, it was not even set forth as a new paragraph in the section as it appears in the Constitution, and therefore, I think that there was some justification and concern when the reference to the exemption of intangible personal property from ad valorem acts was omitted. This article was put in as a separate proposition in the area, as it is so entitled, "Taxation of Intangible Personal Property" and it would be fairly assumed that this was the entire proposal on this subject. I, myself, introduced a proposal which covered the entire article on taxation and included the retention of the provisions presently in the Constitution exempting intangible property from taxation, and, therefore, when that was passed over, that proposition was not acted upon, and this partial proposition which only covered the intangible property held in trust, it could fairly be assumed, and certainly the press and industry and other persons in this party and all of the State were properly alarmed to know that this was at least a subject which was being considered, and this

represented the result of the deliberations of the Committee, which this proposition was introduced. I think, personally, if Senator Greenberg's statement is to be taken, I think the best thing to do would be to withdraw this proposition entirely and have it recommitted to the Committee and then start all over again.

THE PRESIDENT: I don't want to continue the debate on this because the matter is not before us, it has been adjourned, but one moment for rebuttal. Senator Greenberg, go ahead.

MR. GREENBERG: There is no need for withdrawing this, because I am certain Senator Cornell and the other members of the Committee on the Republican side certainly want this continued, don't they, Senator? The exemption that non-residents enjoyed, you want continued?

MR. CORNELL: We want the whole article.

MR. GREENBERG: Supposing that we decide that residents should be the subject of one section, non-residents another, will that make any difference?

MR. CORNELL: They were both included in the same section, they both relate to the taxation of intangible property and, as I read it, they both should be in any new section.

THE PRESIDENT: July 26th. Before we continue with the calendar, may I just interrupt for a moment? I am getting many complaints from delegates who find it difficult to follow the proceedings in this Chamber because there are so many people who are not delegates around the walls of the Chamber. I would like the Sergeant-at-Arms to clear them out, either behind the glass partition or in their offices, and that means everybody. The Chamber is for delegates, and except when delegates ask their secretaries to come down and deliver something, or clerks to talk to them about something, the others shouldn't be standing around the Chamber. Mr. Sergeant-at-Arms, see that that rule is maintained very strictly. The secretary will continue the call of the calendar.

THE SECRETARY: Proposition No. 1336 by the Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to the power of taxation.

MR. GREENBERG: Wednesday

THE PRESIDENT: July 26th. May I interrupt, again? This is a matter that I have discussed with the leadership, and I think it is fair to us to adhere to another so-called rule and this one is done in order to save the time of the delegates. In the past, we have been applauding each one who speaks and listening to this applause wastes time. So I would suggest—and this, I understand, is with the consent of the leadership on both sides—that we refrain from applauding. I think we ought to just listen to each others' arguments and refrain from applauding. The Secretary will continue with the calendar.

(Applause)

THE PRESIDENT: I don't want you to applaud me either.

THE SECRETARY: Proposition No. 1337 by the Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to exempting certain public pensions from income taxation.

THE PRESIDENT: Laid aside.

THE SECRETARY: Proposition No. 700-C by Mr. Tyler. A proposition to insert an article to the Constitution, in relation to suffrage.

THE PRESIDENT: Laid aside.

THE SECRETARY: Proposition No. 1285-B by Mr. Stockmeister. A proposition to repeal Article Fourteen of the Constitution, relating to conservation, and to insert in the proposed Constitution a new article, in relation to the forest preserve.

MR. CHARLES F. STOCKMEISTER: Mr. President, Monday, the 31st.

THE PRESIDENT: July 31st.

THE SECRETARY: Proposition No. 139-B by Mr. Walsh. A proposition to amend Article One of the Constitution in relation to the right of suffrage.

THE PRESIDENT: Laid aside. Now, may I suggest that we do not go the order of the lay aside calendar, but rather we go right to 700-C?

A DELEGATE: We have three more.

THE PRESIDENT: Oh, I am sorry, we have more on the calendar. The Secretary will continue with the calendar.

THE SECRETARY: Proposition No. 1345 by Committee on Rules. (At the request of the Committee on State Finances, Taxation and Expenditures.) A proposition to insert in the proposed Constitution a section, in relation to payment of State debts.

THE PRESIDENT: Laid aside.

THE SECRETARY: Proposition No. 1346 by Committee on Rules. (At the request of Committee on State Finances, Taxation and Expenditures.) A proposition to insert in the proposed new Constitution a section, in relation to the submission of the executive budget to the Legislature.

THE PRESIDENT: Laid aside.

THE SECRETARY: Proposition No. 1347 by Committee on Rules. (At the request of Committee on State Finances, Taxation and Expenditures.) A proposition to insert in the proposed Constitution, a section, in relation to authorizing the State to contract debts in anticipation of the receipt of taxes and revenues.

THE PRESIDENT: Laid aside.

I might say, for the information of those who question the words "Committee on Rules, that these were not propositions reported out by the Rules Committee, but these were propositions that were introduced by the Committee on Rules at the request of the standing committees when their time to introduce propositions had expired. These propositions were referred to the Committee on State Finance and are that Committee's product, rather than the Rules Committee.

Now, may we continue with debate on 700-C by Mr. Tyler? Mr. Rice, do I understand you have an amendment to offer?

MR. R.A. RICE: I do, Mr. President.

THE PRESIDENT: Will you offer it?

MR. RICE: I offer the following amendment, move its adoption, waive its reading and will briefly explain it.

THE PRESIDENT: Will you hand it up, please?

Mr. Rice offers an amendment and waives the reading. Now, Mr. Rice, will you please explain the amendment?

MR. RICE: This is an amendment to Proposition No. 700-C to add on page

two, between lines six and seven, the following language: "Notwithstanding the foregoing provisions no person otherwise qualified shall become entitled to vote unless such person is also able, except for physical disability, to read and write English."

This is essentially the provision which is now in the New York State Constitution, and I just will take a few minutes to explain a few points with reference to it. I might say at the outset, in support of this amendment, that our duty here is to elevate the practice of government in this State, not to debase it, and I might also say that the pivot on which the entire machinery of government turns is the voting booth and that the primary practitioner of the art of government is the individual citizen casting his ballot.

If this decision is informed and responsible, we may fairly expect that the entire machinery will be sound throughout. However, if this decision is not informed and not responsible, I doubt if we can expect that the system will be enduringly sound.

The point of this amendment is that in my opinion it is impossible for anyone to cast an informed and responsible vote unless he can read and write, particularly—with the exception that I will explain in a moment—this means read and write English. There may be exceptions. Literacy is not synonymous with intelligence, and there are, I am sure, illiterate people who are very intelligent and are able to cast an intelligent ballot, but there are exceptions, and we should not cast aside a wise and prudent general rule because of the existence of isolated exceptions. This rule has been in the New York State Constitution since 1922 and, it has served us well. The literacy test has been upheld as constitutional by the United States Supreme Court in the case of *Lassiter against Northampton* in 1959 where the Court said, and I quote: "The ability to read and write has some relation to standards designed to promote intelligent use of the ballot. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet, in our society where newspapers, periodicals, books and other printed matter can present big campaign issues, a State might conclude that only those who are literate should exercise the franchise. The model State Constitution contains a provision empowering the Legislature to provide "a reasonable literacy test to determine ability, except for physical cause, to read and write English."

Now, there is one exception, ladies and gentlemen, which I would hasten to add to this and that is that in New York State we have a substantial minority of citizens who have come from Puerto Rico and one may fairly raise the suggestion that an English language literacy test should not preclude these citizens from voting. I would hasten to offer for your consideration the fact that the Federal Voting Rights Act of 1965, which also has been sustained by the Supreme Court, fully protects the right to vote of persons educated in schools under the American flag where instruction is held in a language other than English, and the Act specifically includes, of course, Puerto Rico, and I will refrain from reading the text of the Act which I have just stated. This has been sustained, I repeat, as constitutional and it operates in this state to protect fully the right to vote of those who have come here, those citizens who have come here from Puerto Rico and who, for reasons beyond their control, cannot pass an English language literacy test—they are protected, I emphasize, by the Federal Act.

The point again, ladies and gentlemen, is that this is a rational and prudent regulation of the franchise. It is not discriminatory in any invidious sense. It is reasonably regulated to a wise use of the franchise, and I argue here today strongly against a total elimination of this text.

I might say, in concluding these remarks, that we, indeed, are going to look rather ludicrous in a State where we spend by more than any other State in the Union for education, if we solemnly proclaim as a matter of principal that the ability to read and write is irrelevant to the casting of a ballot, irrelevant to the

exercise of the franchise, I submit we will have involved ourselves in what can only be described as a ludicrous parody of the democratic idea. The democratic idea does not require that the franchise be so universally extended that beyond the point at which its extension would be self-defeating. I submit to you that we have here a wise and prudent regulation. Federal law which applies regardless of what we do here in this Convention has fully protected those citizens of this State who have come here from Puerto Rico and other places where they studied in foreign language schools and we have no justification in wisdom or based upon experience to discard this wise and prudent rule. I would strongly urge and urgently request the members of this convention to adopt this amendment. Thank you.

THE PRESIDENT: The Chair recognizes Mr. Tyler.

MR. TYLER: Mr. President, Delegates: As Chairman of the Bill of Rights and Suffrage Committee, I rise to oppose this amendment. I think it fair to say that in our committee we have exhaustively discussed the question of a literacy test, and as I recall it the real difference in the committee was how the language was to be phrased excluding it from the suffrage article.

I think the minority point of view which finally prevailed in the committee was that there should be no reference in the suffrage article to literacy at all; that it was beneath the dignity of the Empire State to have in its Constitution that literacy was required; that we should just excise it out, and after we agreed this was the procedure to be followed, the language was removed, and I think it was the unanimous consent of the committee that literacy ought to go by the board.

Now the basic reason for the omission of a literacy requirement goes, I think, Mr. President, to the fact that a democratic government is based upon the widest possible representation. As Lincoln said: "To the people you come sooner or later," and that means basically all the people, the poor as well as the rich, the handicapped as well as the favored, those who learn Spanish in American schools as well as those who learn English, and those who while they may be literate, fear taking an examination. Those who might be disqualified by a literacy test still have interests to be expressed through the vote, indeed they may know their own interests and needs much better than those who presume to speak for them.

The old adage that only the wearer knows where the shoe pinches is accurate, and those who may be educationally handicapped should at least have the right to express their views through the franchise. Those with advantages of education, wealth or position have countless ways of casting votes and bringing their influence to bear. The disadvantaged should at least have one vote.

If there are those who cannot pass a literacy test, this is basically an educational responsibility of the State, and the failure of government should be dealt with as an educational matter and not in effect as a penalty levied against those who are already handicapped.

When the Federal Court in *Morgan* against *Katzenbach* upheld the voting provisions of the Civil Rights Act of 1965 which allowed literacy in Spanish, why should we at this late stage require anything more restrictive.

The literacy requirement in the New York State Constitution was passed in 1921 at a time when there was a wave of fear against immigrants and foreigners in this State. Mr. E. H. Young, the record shows, led the movement in the Convention in 1915. He said, "More precious even than the forms of government are the mental qualities of race, they are exposed to a single danger, and that is constantly changing our voting citizenship through the wholesale but necessary and valuable infusion of Southern and Eastern European races whose traditions and inheritances are wholly different from ours."

It may be worthy of mention that one can be informed about matters of public policy through the Spanish Language Press or by means of television where

public issues are often considered in depth so that many peoples are illiterate only in the technical sense.

This is a time of all times to take down the barriers that inhibit communication among citizens of this State, and if there is a small residual problem of literacy, let our schools deal with that problem, but let us not in 1967 label some of our citizens as second class in reference to the most fundamental right.

For that reason, Mr. President, I urge the rejection of this amendment.

THE PRESIDENT: The Chair recognizes Mr. Badillo.

MR. BADILLO: Mr. Chairman, I rise to oppose the amendment. I support the Chairman of the Bill of Rights and Suffrage Committee in everything he has said. However, I would like to add some background in terms of the Puerto Rican community which I think would be useful, particularly to those delegates from upstate where there are few Puerto Ricans in their areas.

I would like to point out, as I think we all know from the statements that are made and the report that is made by the Temporary Commission in the booklet on the right to vote on pages 19 to 28, there is a very excellent statement on the background of this that there are 32 states in the Union which do not have any requirement for literacy, and that many of the industrial states such as Illinois, Michigan, Ohio and Pennsylvania have no requirements for literacy at all. The fact is that literacy has been used as a means of preventing people from voting, and for that reason most of the states that have had the literacy requirement have been southern states and states which are a port of entry, such as the State of New York.

As a matter of fact, the report of the Commission indicates that the literacy test in the State of New York came about as a response to the first immigration of Southern and Eastern Europeans who did not speak English, and to put it bluntly, primarily the literacy test was to keep the Italian community from voting in the 1920's. This is really the only function which literacy tests have served in the South, and of course, the latest migrant group is the Puerto Rican community and therefore the Puerto Rican group is the one most affected by the literacy test. But this would be the case with respect to any other migrant group that should come.

The fact is that the 1965 Voting Act with the Kennedy-Javits amendment which allowed people who had gone to the sixth grade in Puerto Rico to register and to vote in Spanish, should not be held up here as a reason why we can continue with the English literacy test requirement; in fact, there is already a federal exception. Actually what happened was—and I am speaking now as the chief witness for the Puerto Rican community before the Senate and Congress at the time that this amendment was sponsored—what Congress and the President of the United States when he signed this into law, and what the United States Supreme Court was saying, was that the State of New York is backward and was in effect overruled, the provisions of the Constitution of the State of New York was overruled by act of Congress, and this was approved by the President of the United States and it was affirmed by the Supreme Court of the United States.

So certainly it seems odd that after Republicans and Democrats in Congress joined in this that now in 1967 we should have the State Constitutional Convention taking up a matter which already has been debated, which already has been discussed at great length in Congress, and the validity of which has been affirmed by the United States Supreme Court.

Puerto Ricans as I think you know, are citizens of the United States by birth and therefore they have all the privileges, immunities and responsibilities of citizens, and this includes, by the way, service in the Armed Forces, even if they cannot speak English. It also includes, as most of you know, payment of taxes.

I think you know that the New York State income tax forms are prepared in Spanish so that the Puerto Rican can pay his taxes in Spanish, too.

The schools in Puerto Rico are in Spanish by Act of Congress with the approval of the Department of Health, Education and Welfare. So it was for that reason that the Supreme Court held that it would be unreasonable and in violation of the equal protection of the laws that apply to all citizens to require that when a Puerto Rican moves from one state to the other he should not be allowed to vote in a language which had been approved by the Congress of the United States, the language of Spanish.

Now with respect to how familiar the Puerto Ricans are with what is going on, I think that you must all be aware that everything we say here, not only today, but everything that we have been saying all along is read the following day throughout all of Latin America and Puerto Rico, because we have the Associated Press, the United Press International and all the wire services, and everything they write is immediately translated into Spanish, and what we are saying today will be read throughout all of Latin America tomorrow and in Puerto Rico as well.

Just to illustrate what I mean, I have here a copy of the Spanish language newspaper, EL DIARIO, published in New York State, on last Wednesday, so I cannot be accused of having arranged a special edition. This was before this issue came up, and I want you to understand that the Spanish language newspaper is a newspaper in the sense that it reports the news in the same way that any other American newspaper would, in other words, it is not an ethnic newspaper such as the Amsterdam News that concentrates primarily on the news that might be of interest to the Negro community, since the Negro community can read English. The Spanish papers recognize there are many people who cannot read English and therefore the Spanish papers address themselves to news on the assumption the people who read it have no other source of news.

I would like to show you the headline which talks about a statement made by the President of the United States. Another headline talks about the riot in Newark and the picture shows some incidents in connection with that riot.

On Page 2 there was a report of the vote of this Convention on Tuesday July 18, with respect to the eighteen-year-old vote being referred to the Legislature, and just to prove to you that the Spanish papers do not report only on what Puerto Rican politicians might say, I want to point out to you in this report the names of Robert F. Wagner, Richard J. Bartlett, Andrew Tyler, Donald Harrington and the others who spoke at that time are mentioned. Although Herman Badillo's name is not mentioned. This is a report from the United Press International.

On the Editorial Page of this newspaper there is an editorial with respect to the vote that was taken on Monday and there is a very harsh indictment of the Democratic Party for not having lived up to its platform.

I might point out to you that anyone can read the editorials because they are translated into English.

And next to it, there is a full column on the Constitutional Convention and I might point also that right next to that column is a column written by a fellow by the name of Tio Vivo. That is the Spanish name for Drew Pearson. The column is published in Spanish.

So not only do we have newspapers but we have the columnists published in Spanish as well. This is true of all the Spanish radio stations and all of the Spanish television stations as well. There can be no question whatsoever that the Puerto Rican community is instantly informed of what is going on by the Spanish papers, Spanish radio and television in the same way as the American electorate who is able to read and write English is.

I would like to point out one thing many of you may not be aware of. The biggest objection that I have and many of us in the Puerto Rican community have to the literacy test isn't so much the requirement of the knowledge of

English and of having gone beyond a certain grade in English, but it is the operation of the law. The literacy test has been used in many areas of the City of New York to disenfranchise people who are otherwise qualified, and I practically every year bring a case in court—I will take one example, 1960 I brought a case of fourteen Puerto Ricans who had waited for several hours to take the literacy test, who were in every way qualified, one of them was a graduate from the University of Puerto Rico who had studied in English, and he should not have had to take the literacy test at all, and every one of these fourteen Puerto Ricans was allowed to register after the case was won.

But, of course, we could not be in every polling place where people were being disenfranchised and every year we get evidence that indicates that the literacy test in its operation is used as a device to prevent people from voting. This is the harmful aspect that I think that you should address yourselves to because too often, not because of any racial or ethnic prejudice, more because political leaders want to remain in power, unfortunately too many of them are in the Democratic Party, attempts are made to keep the newcomers from participating in the voting process, and the literacy test has been historically one of the means that has been used to prevent people from voting, and I think that it would be most useful if we would eliminate this requirement once and for all.

I know that in this city and in this State as a result of different waves of migration there has been a great deal of resentment that has grown up among the different ethnic groups because certain things were done at the time that that group came to New York City to prevent them from full participation, and of course, the best example is the literacy test itself, and the Italian community. They were the ones who were being sought to be disenfranchised.

The Italian community was able to progress and become a part of the life of the city and State. The Puerto Rican community will be able to do the same thing, but certainly in 1967 we should be mature enough, we should be realistic enough as to the meanings of what we do here, not just the technical professional explanation, to recognize that the Puerto Ricans are going to eventually participate as every other group has done. Rather than providing obstacles which can only lead to resentments in the future we should see to it that they be given every possible opportunity to participate and progress and become totally a part of the life of this city and of this State faster than other groups.

Thank you very much.

MR. C. E. RICE: Mr. President, would Mr. Badillo yield to a question?

MR. BADILLO: Yes.

MR. C. E. RICE: I read the pertinent passage from the Federal Voting Rights Act of 1965. It reads as follows: "No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any state or territory, the District of Columbia or the Commonwealth of Puerto Rico, in which the predominant classroom language was other than English, shall be denied the right to vote in any federal, state or local election because of his inability to read, write, understand or interpret any matter in the English language."

Is it not true, Mr. Badillo, that if we maintain the present English language literacy test that the Puerto Rican community of which you speak would continue to be protected fully by the Federal Voting Rights Act of 1965, which, of course, overrides the New York State law and Constitution?

MR. BADILLO: Oh yes, I said that when I spoke, but my point was, and I wanted this to be understood by the other delegates who were not there at the time, that Senator Javits and Senator Kennedy sponsored this amendment. The reason that amendment was sponsored by the two New York Senators, and it really was primarily addressed to New York, was because we had for years been

trying to amend the Constitution of the State of New York to eliminate the literacy requirement. We were not able to do so. Therefore, since the Voting Rights Act was being passed for the whole country, it was determined that this provision should be inserted, the purpose of which was actually to nullify the Constitution of the State of New York insofar as it was possible for the Congress to do.

THE PRESIDENT: Mr. C. E. Rice.

MR. C. E. RICE: May I ask one further question, Mr. Badillo. Doesn't that Federal nullification of the New York State law operate only to the extent that the New York State law applies to the people from the listed places? For example, Puerto Rico, where they have completed a sixth-grade education? In other words, the Federal Law does not overrule and nullify the entire New York State literacy test, does it?

MR. BADILLO: No, because the Federal government, you see, could only act in this case with respect to Puerto Rico, because the Puerto Ricans are native-born citizens, but what the Federal Government was trying to indicate was that this should be abolished and the Federal Government abolished it, insofar as the Federal Government had jurisdiction, and it is my hope that we will finish the job here today.

MR. C. E. RICE: The amendment that I proposed would be fully in accord with the Federal law, would it not?

MR. BADILLO: To the extent that the Federal law nullifies a substantial part of it, yes.

MR. C. E. RICE: Of course, it does not attempt to propose to overrule the Federal law.

THE PRESIDENT: The Chair recognizes Mr. Crotty.

MR. CROTTY: Mr. President, I rise in opposition to the amendment and I stand for the proposition that literacy is completely irrelevant to the right to vote. The whole thesis of the whole underpinning of literacy as a qualification of voting is very, very sandy.

When you go back into English history, you find that at one time only illiterate people were allowed to vote, because they were the land owners. The only literate people, namely the clerics, were not allowed to vote and, Mr. President, it is a well-known fact of history that for many centuries, a great race of people with whom I claim some affinity and pride of ancestry, even though they were versed in Latin, in Greek and in Spanish and Italian, English and Gaelic, and could speak them all with grace, style and eloquence, were denied the right to vote.

So enough of this nonsense of literacy as the basis for voting. We all know now that one of the reasons urged for the trouble we are in is our lack of care for those who need an education. How can we say, on the other hand, that we can deprive people of education and then deprive them of the right to vote because they have no education?

It seems to me, Mr. President, that we are pretty much in a dilemma if we try to stand for the proposition that literacy is a basis of the qualification for voting.

I maintain, Mr. President, that in this day and age, as I said a moment ago, that our concern should be for a lack of consideration of yesterday. I think that we should stand four square before the United States and before the world as giving the right of suffrage to everybody.

We know throughout our own history that many sturdy, resourceful, independent people of natural wisdom, who illiterate when they came to this

country, became citizens, voted, raised good families and gave their children great educations—many of them presently in this room. So I maintain, Mr. President, that this amendment should be rejected.

THE PRESIDENT: Mr. Wagner.

MR. WAGNER: Mr. President, fellow delegates, I rise in opposition to the amendment and, as some may know, I have for many years, when I had the opportunity, to serve the people of New York as Mayor, fought for the elimination of the literacy test. But I don't want to make any lengthy speech. I know we want to get to the vote. But I would like to, with your permission, just quote a few passages, from a speech by a distinguished New Yorker at the 1915 Constitutional Convention, who happened to be at that time the Democratic Leader of the New York State Senate, who himself was an immigrant boy.

He said in part:

“A literacy test for voters is one requirement which does not apply to this day of tolerance and liberal thought, especially in this State. What is the meaning of such an amendment? What will be the result?”

His answer was: “The proposal is directed against the foreign-born American.” He went on to say: “Literacy or education does not, in any respect, determine a man's character or his desirability as a citizen. The immigrant of today becomes an immigrant merely because the land of his nativity denies him the opportunity to learn, and because he wishes to secure for his children in this country what has been withheld from him in the old country. Such a man has the most desirable character: he has ambition to elevate himself; he has the courage to strike out for himself in a new land; he is above his neighbor who stays home and refuses to improve himself. He is thrifty enough to save, daring enough to try, ambitious enough to succeed in life even though he cannot read or write the English language. Deprive this man of the privilege of voting. You would be committing the greatest political mistake that you possibly could commit in this Convention,” and that is in 1915.

(Reading) “You would be offering an affront to the men whose children will be the leaders tomorrow in this country,” and many of them are here in this Chamber today.

Just to finish up, he went on, “If literacy were a valid test of voting, nearly fifty per cent of our early settlers, would not be entitled to vote. In the seventeenth century, eleven per cent of the men and fifty-eight per cent of the women in Massachusetts could not write their names; in Virginia, forty-six per cent of the jurors made their marks, and seventy-five per cent of the women were illiterate. The same degree of illiteracy prevailed during the Revolutionary period, and yet we rightfully boast ourselves to be a son or a daughter of the American Revolution.

“If the literacy test is not practical it certainly is not necessary. (This was in 1915.) For a while, thirty-nine years, this Republic and this State have worked out their political destinies happily, honorably and profitably. The people of this State have exercised the privilege of voting with all the intelligence, honesty and common sense that can reasonably be expected of human nature. Contributing to the net results, there have been during the years millions of illiterate voters who went to the polls, not competent to read a printed book, but able to read human nature; not capable of using a pen but eminently qualified to wield the ballot without bias and without fear.”

I am proud to say that that statement was made in the 1915 Convention by my late departed father, and for that and many other reasons I think an amendment of this type should be defeated and that we stand four square for everything that is good and decent in this country.

THE PRESIDENT: Mr. Berry.

MR. BERRY: The basic proposition of 700-C comes before us without recom-

mendation, but I think the delegates should appreciate that a good many of the provisions were discussed at length within the Bill of Rights and Suffrage Committee, and this was one of them.

Chairman Tyler correctly reported that it was discussed and its format was changed so that it became acceptable to a good number, a good majority of those who were voting on it within the Committee, although there were so many debatable propositions that as a whole this did not come before you with a recommendation. But on this particular item, I would say that the Committee was by a great majority in accord, and I just want to mention one or two of the points that perhaps changed some of our minds, because obviously as you go into this for the first time you would think it would be reasonable that everybody should be able to read what is on the ballot, but there are other considerations.

In the case of people coming into this country from other countries and appearing to vote it was pointed out that suffrage applies only to citizens and in regard to those people, before they become citizens, they go through a process which certainly assures the naturalization process that they are well qualified to vote.

It was also brought out in the Committee that the process of administering this literacy test psychologically is a very easy thing for some people to accept. But in the extreme case, to stand in line and then be told in the presence of your neighbors that you have to go and take a literacy test is hard for people to accept. And may keep people in certain instances from going to the polls in the first place.

There is one small point that I would like to add. I happen to live in a district where we have thirty-five or forty blind persons in an institution there who are among the most intelligent and interested voters that we have, and yet I have sometimes wondered if strictly applied, because they don't all know Braille, whether the ability to read or write at that point would be possible for them, and that this would clear that up, if there ever was an objection.

Finally, I think you will find, although you probably know, that most voters are very concerned about knowing what they are voting for, and I think that is why we only get about fifty per cent voting on the propositions running across the top of the ballot. It is not that the people are not interested, but the voters themselves have a very strong fear and value their vote because it means something to them and they do not want to cast it unless they know what they are doing. I think that explains why so many of our propositions are voted on by a smaller number of people than vote on other items. I personally would prefer in that instance to leave this to the discretion of the voters, and I am not in favor of the amendment. Thank you.

THE PRESIDENT: The Chair recognizes Mr. Mangano.

MR. MANGANO: Mr. President, I rise at this time to oppose the amendment to the Tyler proposition. I received the notification from Mr. Tyler regarding Proposition No. 40 which I introduced, and he said that the recommendation of the sub-committee of the full committee concluded that the basic provisions of the proposition in which I was interested, combined with that submitted under Proposition No. 700-A—I assumed that that is now 700-C—am I correct, Mr. Tyler?

MR. TYLER: Yes, you are.

MR. MANGANO: Mr. President, back in 1935 a young man stood on this Assembly floor and introduced a resolution that the Constitution of the State of New York be amended because of discrimination which was taking place in the State of New York in that there was an unfair provision in the Constitution which deprived certain segments of our citizenry of a sacred right, granted them

by the Constitution of the United States. This young man made many pleas to the members of the Assembly at that time to the extent that some of the newspapers, particularly one newspaper which was a reactionary newspaper sought to criticize this young man in the election of 1936, and said that he should be defeated because he introduced a resolution to do away with the literacy test.

And here we are, after thirty-one years, waiting for this opportunity. I come before you as a more mature man to make the same plea. I was particularly interested in the remarks of Mr. Badillo, who referred to the Italian immigrant—yes—and he says that they tried to deprive the Italian immigrant of his right provided to him by the Constitution.

So we come here in 1967 and we say to you, members of the Convention, let us do away with this discrimination and let us reflect on the great contribution that has been made not only by the Italian immigrant, but the Russian immigrant, the Irish immigrant, and immigrants from the entire world. Yes, they have made great contributions that have now become the fabric of America, comprised of all these immigrants who have made not only New York State great, but this country of ours the greatest nation in the world.

The present constitutional provision requiring a literacy test imposes an onerous burden upon our naturalized citizens. Under Article 8 of the United States Code, Section 1423, a person, to become eligible for citizenship, must demonstrate an understanding of the English language, including the ability to write and to speak the English language, and they must also possess a knowledge and understanding of the fundamentals of our American history and of the principles of the form of our government.

Thus it is patently apparent that a person who fulfills the requirements of citizenship immediately qualifies to vote, and it should not be necessary to subject that person to further proof of his qualification of literacy. To do so amounts to disenfranchisement of his rights and is in violation of the 14th Amendment of the Constitution.

It should be noted that at this point twenty-five states, mostly highly urbanized states, such as Illinois, Ohio and Pennsylvania, do not require literacy test. Whatever justification may have existed when the literacy test was proposed, at the Constitutional Convention in 1915, it does not exist today, particularly in view of the mass communication media which is available to the citizens of today; thus, television and radio as well as foreign language newspapers, as Mr. Badillo indicated a few moments ago, provide information necessary for the illiterate.

Finally, thousands of potential voters who cannot read or write English stay away from the polls because of their reluctance to take this test. The mere suggestion of having to take a test has created a psychological block, preventing these people from exercising their right to vote and it has through statistics that over one hundred thousand people are deprived each year of this privilege and right.

I respectfully ask this delegation to defeat the amendment proposed by Mr. C. E. Rice.

MR. BRYDGES: Mr. President.

THE PRESIDENT: Senator Brydges.

MR. BRYDGES: Mr. President, would it have any effect on the length of this debate if I were to say that the men on this side of the aisle were overwhelmingly against this amendment when we came here?

THE PRESIDENT: I think that is a very good suggestion, Senator Brydges.

MR. BRYDGES: And we have nothing to change our minds now.

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor indicate by saying "Aye".

MR. C. E. RICE: Mr. President, may I request a slow roll call?

THE PRESIDENT: Will twenty rise in their seats to support the request? Twenty not being up, the request is denied.

All in favor of the adoption, please indicate by saying "Aye".

MR. BRYDGES: I withdraw, Mr. President—

THE PRESIDENT: Will you please listen to the question as it is put to you?

Will all those in favor of the adoption of the admendment indicate by saying "Aye". Those opposed indicate by saying "No".

I do not think there is any question, Mr. Rice, that this has been defeated.

MR. C. E. RICE: I agree.

THE PRESIDENT: The amendment is defeated.

MR. BELL: Mr. President.

THE PRESIDENT: Mr. Bell.

MR. BELL: Mr. President, fellow delegates, I have an amendment today to offer to 700-C which has to do with the property qualifications as a condition precedent for holding office, and I would like to withdraw it at this time and explain my reasons, briefly, because it has to do with—

THE PRESIDENT: Except, Mr. Bell, the amendment has never been offered officially.

MR. BELL: Well, I would like to state what it is, Mr. President, because it is involved with Mr. Walsh's proposition of 139-B and I will be very brief.

THE PRESIDENT: That is all right, Mr. Bell.

MR. BELL: I introduced proposition No. 43 which had to do with elimination of the property requirement for holding office. It was referred to the Committee on Bill of Rights and Suffrage. When I introduced this, I introduced it as an addition to Article 13, the public officers' article, because I thought it belonged there. Other propositions dealing with qualifications were also referred to the Bill of Rights and Suffrage Committee, so I thought under the rules of humanity we were being told we should play this ball game with the Bill of Rights and Suffrage Committee, so I proposed this amendment and had it drawn, and it would have the effect of adding about seven words, and that would take care of it.

It would just prohibit including the requirement of ownership of real property as a condition precedent to holding public office.

Now, I understand by looking at today's calendar that Mr. Walsh has a proposition which says it in 19 words. Of course, I have a little pride of authorship; mine only takes 7 words, but his is on the calendar and I endorse it in principle, because it does get away from an anachronism that we have. What we are basically talking about is village elections and town elections.

I ran across this situation in the case of a fellow that I was trying to induce to run for the council, but he was not the owner of real property. He is a professor and a doctor of engineering and has worked very hard in the community in public service, cancer crusades and things of this nature and he would make a tremendous contribution in the administration of the town government. But under our ridiculous law as it now exists, he is not qualified because he does not own a piece of property.

When our country began, we had a situation where a man had to own at least 50 pounds annually in income and property before he could vote. Now gradually these restrictions have been eliminated and today we have eliminated a few more and we are getting to the point where our economy is much more varied, it is not land-oriented. We have people who work, they draw salaries and live in

apartments and never pay any real taxes; they never own any real property. There is no reason why they should be discriminated against and that the local government should be deprived of their abilities to contribute significantly to the art of government.

Now I think that it is anachronistic and we have to do away with it. The Walsh proposition, which is 139-B, effectively will do it in principle. I think the language could be tightened up, but that is something that I assume is for Style and Arrangement and Presentation; so at this time, Mr. President, although I had introduced my proposition prior to Mr. Walsh's, Delegate Walsh's, but his is on the floor, I will not offer this amendment and see what happens to the Walsh proposition. If that proposition prevails, of course, I will never offer it. Thank you.

MR. GENRICH: Mr. President.

THE PRESIDENT: Mr. Genrich.

MR. GENRICH: Mr. President, Fellow Delegates, I offer the following amendment, move its adoption, waive its reading and will explain said amendment.

This amendment would amend by inserting in Proposition 700-C at page 2, line 14, after the word "felony" the following—and, incidentally, this proposition is printed on the mimeograph sheet at page 3. It is line 17, page 2. The following is inserted after the word "felony":

"However the Legislature may provide that the ownership of property shall be a qualification for voting in an improvement or special district vote."

This amendment is similar to Proposition 1338 passed by the Committee on the Bill of Rights when we were considering this suffrage proposition. At that time I understand that it was felt that the proposition should be referred to the Committee on Local Government and Home Rule. However, from the point of view of draftsmanship, it is my feeling that it should be considered now and if passed inserted in the suffrage article instead of being buried in the local government provisions of our Constitution.

Traditionally, since 1777 there has been property requirements in local elections. This requirement arose at a time when real property was the only source of taxation. It was felt that since revenue was raised by a land tax, only those who owned land should vote. With the taxing of sources other than real estate, the area where this reason applies has decreased.

I am generally in favor of removing property requirements from voting qualifications. However, here is one field where a real purpose and vital reasons exists for its retention.

Presently, the town law provides property requirements in certain elections for voting on certain propositions. Town law, Article VI, Section 84, provides:

"No person shall be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any town liability, or for the sale or other disposition of town land or property unless he or she is an elector of the town and the owner of property assessed upon the last preceding town assessment roll."

Now, this part of the existing town law requiring ownership of real property to vote on a proposition for a town liability or sale of town property would be unconstitutional under the proposed Proposition 700-B and also under this proposed amendment.

What this amendment would permit is to allow to continue the last part of this paragraph which reads as follows:

"Nor shall he or she be entitled to vote upon any proposition for raising, appropriating or expending money or incurring any liability which shall be a charge wholly against a district or a portion of said town unless he or she is an elector and the owner of property in such district or portion of the town, assessed upon the last preceding town assessment roll."

This amendment does not attach a property requirement upon the right to vote for a town or village official or even to vote on a proposition to occur just a general tax liability of a village or town.

This amendment permits the Legislature at its discretion to continue the existing property requirement in voting where the land is going to be pledged for an obligation for the improvement of a certain area. It allows the continuation of what for years has been a safeguard to home owners in this field. This is important because in the towns especially, a great many improvements such as sewers, streets, et cetera are put in on a special district basis and only the land benefitted is assessed.

Notice, I said "assessed" instead of "taxed." What is involved here is assessment against the land benefitted as distinguished from a general tax. The lien that results from such an assessment is an encumbrance against a specific parcel and shows up in a title search of a person's home or other real estate.

It has long been considered fair and necessary to allow only those whose home or land is going to be pledged or mortgaged to vote in such cases. Often the obligation voted upon would be a lien against a person's home for 30 to 40 years. Since it is a charge and assessment against the land, it is felt that only those who own the land should be the ones to decide if they want to pledge or mortgage it for a special improvement to their land.

In a case like this, it appears to me and I hope to the other delegates that it is unfair to mandate the removal of the additional property requirement that now exists. This amendment is necessary to protect home ownership in our towns which is the basis of these communities. I therefore urge the adoption of this amendment.

THE PRESIDENT: Any other discussion on this amendment? Mr. Slocum.

MR. SLOCUM: Mr. President and Fellow Delegates: It is nice to be able to rise and speak about something that one knows something about, and it just so happens that as a Town Supervisor relating and working with special districts, I do have some knowledge in this area and would recommend this amendment to you.

In my own particular township we have special districts that include only one property owner, so you can see the difficulty that we could run into if we didn't have this requirement of ownership, and it could happen theoretically where only one property owner was involved that if he had two tenants, they could overrule his wish as to the development of some special improvement on his own property, such as a water main extension, a lighting district extension or a sewer extension.

On the other hand, if the vote went to all the people of the town, they could mandate such an improvement on his property and the taxes would be completely confiscatory. So I think that the law as it now applies to special districts, although it might not have general application in many of the heavily populated areas of our State, does have an application in our townships and for the special districts, and for that reason I would recommend it to you.

THE PRESIDENT: Any further discussion on this amendment? The question occurs upon the adoption of this amendment. All in favor, indicate by saying aye. All those opposed indicate by saying no. The amendment is defeated.

MR. BRYDGES: May I call for a division of the House on this question—a slow roll call?

THE PRESIDENT: Yes. The Chair withdraws its decision and a slow roll call is asked for. The Secretary will call the roll.  
(The Secretary called the roll.)

MR. BURNS: Mr. President, I ask to be excused from voting and briefly state my reasons.

THE PRESIDENT: Mr. Burns.

MR. BURNS: Ladies and gentlemen of the House, on Wednesday you will recall late in the afternoon I presented an amendment which was broader than that which Mr. Genrich has just been proposing, and yet a large amount of the basis of my argument centered around special districts. After the conclusion of the day's proceedings a number came to indicate that if my amendment was limited in some manner, they thought that there was good reason regarding this general question of special districts.

Mr. Slocum has spoken and has amply described the views of the townspeople regarding this whole question as to how to furnish services and facilities for a portion of the town. I respectfully suggest that this not be deemed again as anything partisan, nor is it deemed to be a program which may apply to urban areas, but I do suggest that the whole question of special districts relying on property in the district just demand that those who must, as Mr. Genrich has indicated, bear the burden as an assessment for 20 or 30 years, should have in all fairness the right to decide what expenses should be placed upon that district.

I withdraw my request to be excused from voting and vote in the affirmative.

THE PRESIDENT: Mr. Burns in the affirmative.  
(The Secretary continued with the roll call.)

MR. CAMPBELL: Mr. President, I wish to be excused from voting and explain my reasons.

THE PRESIDENT: No objection, Mr. Campbell.

MR. CAMPBELL: We all know of the great growth in relation in this State that is taking place in towns outside of cities. In fact, cities are not growing in any numbers at all and, in fact, some of our great cities are declining in population. This means that the Division of Public Services is having its greatest impact today in outside city areas, and in these outside city areas there has been in the last few years a substantial boom in apartment building, which means that these apartments are being built by renters, tenants, as well as in the many private homes in the outside town areas there are many people who are renting because they are assigned to jobs with great manufacturing concerns and move from locality to locality as they move up the career ladder. As a result of this, there is a growing group of tenants who have a very direct interest in taxes imposed for the provision of public facilities, because you know, as well as I, that they pay these taxes in rent charges. As a result of this, it seems to me they have as direct an interest in the building of new facilities as do the owners of the property, and for that reason, I suggest that we should vote against this amendment, and, Mr. President, I ask that my request to hold my vote be withdrawn and I vote in the negative.

THE PRESIDENT: Mr. Campbell in the negative.  
(The Secretary continues with the roll call.)

MR. CORNING: Mr. President, I ask to be excused from voting and briefly state my reasons.

THE PRESIDENT: Without objection, Mayor Corning.

MR. CORNING: In many of the cities of the State, improvements are assessed against property owners only on the petition of those property owners. In other words, only the property owners themselves, have the right to vote as to whether or not certain improvements are made. I withdraw my request and vote aye.

THE PRESIDENT: Mr. Corning in the affirmative.  
(The Secretary continues with the roll call.)

MR. GENRICH: Mr. President, I request the privilege to explain my vote.

THE PRESIDENT: Without objection, Mr. Genrich.

MR. GENRICH: In answer to Mr. Campbell's explanation, I am reminded of a story of three delegates who rented a car for the month of August, which is a hot month in the City of Albany. After they rented the car at a set price, they decided they wanted an air conditioner put in, so they asked the owner if they could put in an air conditioner and put a chattel on his car. He said, "No, because in the cold months, I won't be able to rent the car and get the rent sufficient to pay for the air conditioner." They said, "Well, we will take a vote." So they took a vote, put in the air conditioner and after the month of August, they returned the car back to him. They were good enough, like the tenants may be, to pay him one month's installment, but the owner was stuck for the other eleven months installments. It is true that the owner of the car could probably take that car and peddle it down in Florida if he couldn't meet the obligations and he couldn't meet the other increase in costs, like car insurance, and so forth, but an owner of real property is stuck. After the debt is incurred, he can't move the property, he has got to continue to pay for it, although the renters may move away.

I would also like to point out that the very growth of our town, as well as home ownership, depends upon the preservation of this right, because if you don't give these property owners a right, they won't form these special districts, they will oppose them, and you won't have growth in your town. I vote aye.

THE PRESIDENT: Mr. Genrich in the affirmative.  
(The Secretary continues with the roll call.)

MR. McCURN: Mr. President, I ask that I be excused from voting and briefly state my reasons.

THE PRESIDENT: Without objection, Mr. McCurn.

MR. McCURN: Mr. President and fellow delegates: Last week, I was prepared to vote against Mr. Burns recommendation or amendment, because I felt that it adversely affected a great segment of the population, and that is the non-property owners in matters of which they obviously had a concern. However, I feel that this amendment narrows the issue down enough, and as a representative of the towns and villages in my area, I feel that it gives them protection, they should have it, and it will encourage the growth of villages and towns, and therefore I withdraw my request and ask to vote in the affirmative.

THE PRESIDENT: Mr. McCurn in the affirmative.  
(The Secretary continues with the roll call.)

MR. NORTON: Mr. President, I would like to briefly state my position.

THE PRESIDENT: Without objection, Mr. Norton.

MR. NORTON: As a co-delegate with Mr. Genrich, I am somewhat familiar with town government and I wanted to point out to Professor Campbell that his position cuts both ways. Our towns are subject to great growth these days, but we have towns that are not, and as I read Mr. Genrich's statement, or his amendment, it says the Legislature may provide for ownership in a special district election. It seems to me that the major thrust of our Constitution this year should be a Constitution that gives legislature and gives our local government the utmost inflexibility, and I would suggest that his amendment does exactly this. It would allow the Legislature the greatest breadth in defining property qualifications, perhaps not even on a town basis, but on a population basis. Certain towns of a certain population, or a certain number of renters might be able to be excluded from this amendment, if this is as I read it. But I point out that

this is very similar to the old education article that required property ownership in school elections. It worked very well in many years while the property owners were paying the biggest shot in education. Now that this is changed, we are getting rid of it, hopefully. I suggest that this is not yet the case in special districts, that the property owner, in many cases, is providing the greatest shot and he should therefore be protected, and when it comes down to the point where there are a greater number of tenants in a town or a special district, perhaps then it could be removed, but it seems to me under this amendment, this is exactly what could happen, and it could happen at the legislative level. I would suggest, therefore, that this would be a very excellent amendment to this article, and I withdraw my request, and I vote yes.

THE PRESIDENT: Mr. Norton in the affirmative.  
(The Secretary continues with the roll call.)

MR. PITTONI: Mr. President, I ask permission to withhold my vote for an expression of my views.

THE PRESIDENT: Without objection, Mr. Pittoni.

MR. PITTONI: I am from Nassau County and we have a number of improvement districts in that County and it is true that the people in the districts do vote, the tenants do vote, but very often, tenants live there for a short while and move out, and after they have moved out, they have saddled for thirty years, sometimes, a lien upon the property and district. Tenants move in and tenants move out, but remember this; those of us who have to keep on paying those taxes for thirty years, in many instances, are the property owners. Therefore, I now vote aye.

THE PRESIDENT: Mr. Pittoni in the affirmative.  
(The Secretary continues with the roll call.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 86; noes, 90.

THE PRESIDENT: The amendment is defeated.

THE PRESIDENT: Are there any other amendments to be offered?

MR. CORNING: Mr. President, I offer the following amendment, waive its reading and move its adoption.

Mr. President, this amendment is designed to remove from the suffrage article the definition of residence that was placed in it last week. Last week we took from the suffrage article and gave to the Legislature the power on certain items that had previously been in the constitution. The Constitution previously mandated that the right to vote would be prohibited to those convicted of bribery or other infamous crimes. The Constitution previously established the voting age at 21. Last week we changed that so that the Legislature could reduce it to 18. Last week we eliminated from the Constitution the provision about gain or loss of a residence from being in an institution or a school or institution of learning. In other words, the entire thrust last week was to change the Constitution and give more power to the Legislature on the question as to who should vote and how we should vote, make it more flexible.

This amendment is extremely restrictive when it says: "When used in this article the words resident and residence shall be construed to apply to that place where a person maintains a fixed, permanent and principal home and to which he wherever temporarily located always—" and remember that word "always" "always intends to return."

I believe that this should not be in the Constitution, that it is a definition that should properly be determined by the Legislature, and I hope that this amendment will prevail.

THE PRESIDENT: Any discussion on the amendment?

MR. ROONEY: Mr. President.

THE PRESIDENT: Mr. Rooney.

MR. ROONEY: Mr. President, Ladies and Gentlement of the Convention. This particular amendment that Mr. Corning has addressed himself to was an amendment that we passed in this House last Wednesday by an overwhelming vote of 134 to 31. Now it may well be that some delegates here have personal problems with reference to the areas they represent, and it may well be that this amendment will perhaps lead to better government where people will really and truly represent the people in the area where they live.

I think if we are going to reopen a proposition like this—I was almost alone with Mr. Troy on another item, maybe we could reopen that, or maybe we ought to reopen the whole thing. We have to have some finality here. I think that this amendment carried, it was the sense of this Convention, and I hope that we will have an overwhelming vote here to defeat it, even a higher vote than we had before this amendment of Mr. Corning.

THE PRESIDENT: Mr. Burton.

MR. BURTON: Mr. President, in discussing this very same issue last week, I thought it was quite apparent that it was the sense of the Convention that in view of the fact of the possibility of a lowered voting age, and particularly since the very recent defeat of the Genrich amendment, that it became absolutely necessary that we safeguard our local communities from the possibility that there would be those people who would claim residence in an area in which they actually did not reside and in which they really only attended on a temporary basis.

I think now it is even more important than ever in view of the fact that the Genrich amendment has been defeated, that we buttress our support for Mr. Rooney's proposition, and certainly I think that we would be doing a great disservice to the extensive areas outside of the cities of our State which house the so-called college populations, particularly in that we would be in a position now if we were to lower the voting age, to register in effect on campuses, and any concerted effort along these lines could lead very possibly to a situation that did happen and actually happened several years ago in the State of Michigan.

Just very briefly if I may address myself to that. In 1963 the State of Michigan did away with the so-called gain or loss provisions in their Constitution, and they left it to the Legislature as to what to do with respect to residence. The State Legislature did pass a statute which in effect said the same thing as their prior Constitution on gain or loss. However, on its interpretation by the State's Attorney General and the courts of the State they found a very loose and liberal interpretation of that statute, and I might say that a person who habitually sleeps in a given place can be considered a resident. I do have some statistics which I can make available—and I don't advocate that, Mr. President—which shows very definitely that a drive, a concerted student drive was made in the University of Michigan in 1963 whereby students were actually instructed as to how to answer the questions posed as to residency in line with this very liberal and loose interpretation—I use the word loose very advisedly here—and they did manage to influence very definitely that local election in the City of Ann Arbor, Michigan. This is a matter of record. I believe out of five wards in that City, that through this student combination, if you will, they were able to capture three of them, or at least influence decidedly three out of five wards in the City of Ann Arbor.

So I say, Mr. President, inasmuch as we have debated this very issue before, and particularly since the Genrich amendment is now history and has been defeated, and in view of the fact the Convention in its wisdom decided to allow the

Legislature to determine the age, and conceivably an 18-year-old age might come about, that it is more important than ever that we uphold Mr. Rooney and defeat the amendment.

THE PRESIDENT: Mr. Dinkins.

MR. DINKINS: I propose to vote against this amendment, but not for the reasons of substance, but for the reasons of procedure that Mr. Rooney stated a moment ago.

I was one of those in that minority that voted against your proposition the last time, Mr. Rooney, and I still feel the same way, but I have examined this amendment and it would appear that all it does is take out what Mr. Rooney put in. It seems to me we would be here long beyond September 26 if this is our procedure.

THE PRESIDENT: Mr. Harrington.

MR. HARRINGTON: Mr. President, I feel called upon to make a comment on Mr. Burton's remarks.

I would like to call to his attention that when I asked Mr. Rooney a question last week as to whether this provision would prevent the college student from declaring his principal residence to be the community in which he was studying, Mr. Rooney's answer was No, this would not prevent it.

Very few college students go back home. It would help a great many of our college communities if college students settled in those communities and became interested in those communities.

I think it deplorable that there should be so much fear, especially of the young graduate students who have their families started in these communities, and might, with a little encouragement, stay in them to the benefit of the communities.

I happen to have been educated in a college in which the college and community have learned to work together, and form a community that had no production at all, college graduates over a period of thirty years have organized industries that now produce about \$35,000,000 gross product a year, the village of Yellow Springs, Ohio, and I commend this example to other college communities.

I think it deplorable with the growing number of college students in our colleges and universities to do anything that would prevent them from taking an active interest in the political life of those communities.

I supported Mr. Rooney because I believe his interpretation is the correct interpretation, that what is declared to be a principal home by a voter is considered the principal home.

THE PRESIDENT: Mr. Burton.

MR. BURTON: Just briefly, in reply to Dr. Harrington, I believe that the question that was raised at the time of the debate originally here was addressed to the subject of graduate student, I believe, and there is nothing in the Rooney amendment that would prevent any graduate student who lives either on or off campus from voting if he can show clearly that he is a bona fide resident of that community. So there is nothing here that would prevent such a person from exercising his franchise, nor is there any intention to do so.

THE PRESIDENT: Is there any further discussion on this amendment? The question occurs upon the adoption of the amendment. The secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: All those who are opposed, please raise their hand on this type of roll call.

Maybe we can take an aye and nay vote. All in favor of the amendment indicate by saying aye; all opposed say no.

The amendment is defeated.

Senator Marchi.

MR. MARCHI: Mr. President, I offer the following amendment, move its adoption, waive its reading and will explain the amendment.

THE PRESIDENT: Senator Marchi.

MR. MARCHI: Mr. President, this amendment—and I hate to go back to it so soon, the question of the voting age, but I will try to make my remarks as brief as possible. This amendment would, on page two of Mr. Tyler's bill, line six, we would add to that: "If the voting age is reduced as provided herein, the Legislature shall at the same time provide by statute that for the purpose of conferring rights, privileges and immunities and for imposing duties and liabilities, a person shall be deemed to have reached majority upon attainment of the voting age."

In other words, Mr. President, the effect of this amendment would be to mandate the Legislature in the event they wish to reduce the voting age to 18, to take all of the correlative responsibilities and obligation and rights and privileges, and to take them all up and to redefine in terms of majority and make it equivalent to the right to vote.

Now, Mr. President, much of what happened last week I imagine was perplexing to many delegates, but I don't think that we should be too perplexed when we think of the notion that society has toward young people. I think this is characteristic of the age. If we can go back just a few years ago, I remember back in '61 and '62 when one of our distinguished parties proposed that we increased the so-called drinking age, or the age at which alcoholic beverages could be purchased, from 18 to 21, and one of our distinguished parties supported this and had it as a plank in its party platform. Nevertheless, I feel that it is true to say that most of us are somewhat confused, somewhat perplexed about what to do with our younger citizens, and I think that much of psychological climate in which the problems of youth is discussed today reflects this uneasiness and this uncertainty.

Freidenberg described this as the repressed panic responsibility to the demolition of authority that adults presumably have over young people. And this has had this effect, Mr. President, that we tend to operate by manipulation and by seduction rather than by punishment and coercion in the field of the maintenance of authority, and until this attitude is clarified, because I do feel that young people do respect authority, we are going to continue to have these difficulties.

So a lot of the response on the part of the public has been confused. We have over-acted many times. Commercial interests stop at nothing in peddling their wares whether it is on television or elsewhere and those of you who have read Vance Packard know of what I speak, so whether we are using them or whether we are just confused and don't know how to face them, we have not faced this important question of how to face young people and what should our attitude be. I think a lot of the terms that we use today, when we speak of a teen-ager we don't speak of a Joan of Arc at 18 and an Anne Frank at 14, it is always calculated to conjure up a bad image, and as President Johnson pointed out only recently, the one youngster who carries on at the point of being drafted is given more publicity than the ten thousand who are enrolled that very same day.

Now the question of liability, Mr. President, under the classical legal definition of infancy, infancy was deemed to have terminated at the seventh year, infancy being a period of non-speaking and non-articulation. As a matter of fact criminal responsibility was commonly accepted as beginning somewhere around the seventh or eighth year. It was only in 1890 that in the State of Illinois we

had our first protective statutes to protect youth and to stress the rehabilitative and protective factors.

And this goes on in other areas, the areas of contractual liability. We have a confused field. The son of a rich parent apparently has greater contractual capacity than the son of a poor parent because there is a more liberal construction on that which is deemed necessary to a rich man's son. A married person has greater contractual capacity. On the other hand married young people find themselves under severe disability when they make major purchases because they must either pay cash or they are not able to make the purchase without the presence of a surety or a guarantor of payment.

So we have these mixed feelings, and I don't see how anyone can contend that they are not highly inter-related.

Many of you when you voted to give this question to the Legislature on the day following the adoption of Judge Troy's proposition expressed this very fear, that we did not have a balanced, deeply felt conviction on all the ramifications that are connected with this very important question.

So I ask, Mr. President, this ground has been covered very thoroughly, very completely, that we relate in our instructions to the Legislature, that we relate the concept of responsibility, and when the Legislature does take up this question, if this amendment is to remain in its present condition, that when the Legislature takes up the question of altering the voting age, if they take that up also the correlative responsibilities, liabilities, obligations, duties, privileges, all of the things that go with the act of voting, that—the act of voting, I feel, is at the end of the line, it is really a trusteeship that each person holds as a valuable right, as so many of you have pointed out, and I feel that it only makes common sense to keep these two concepts in tandem and as long as we delegate this responsibility to the Legislature, let's do it on a responsible basis.

MR. MANKIEWICZ: Will the delegate yield?

THE PRESIDENT: Mr. Marchi, will you yield?

MR. MARCHI: Yes.

MR. MANKIEWICZ: Senator, if I follow the thrust of your argument, you would require of the Legislature at the time that it acts under the authority we gave them, that they would also act to reduce the age at which the other attributes of majority would take effect. Now, if we do not adopt your amendment, sir, would they not have the authority to do that at the same time, in any case?

MR. MARCHI: We would have the authority to do in any case, but we are making an institutional change and this is why I supported Judge Troy's proposition the other day. We are making an institutional change of major proportions which keeps these two concepts in tandem. In other words, the concept of the voting age and responsibility now go firmly together; they may be in different sections and they may not be in the one package, but the two concepts go hand in hand, and now we are contemplating, we are proposing to separate them, we are proposing to grant rights without liabilities and at the same time perhaps also perform a disservice to these people because there are real and genuine disabilities. So since we are dealing with questions, it is institutional questions, constitutional questions, basic policy in the attitude of the state—there I feel it is perfectly consistent to keep these concepts in tandem.

MR. MANKIEWICZ: Senator, I would not argue there are many attributes we are dealing with here, and would it not make sense to leave this decision as to which ones ought to be tied to the voting age and which ones not, to the discretion of the Legislature at that time?

MR. MARCHI: Mr. Mankiewicz, my feeling is that—and I have submitted and introduced a proposition which would reduce the voting age to 18, and also ex-

tend this concept to the question of liability and the question of privileges and the question of duties and obligations, et cetera, and that we do this now. I am in favor of doing it at this session and submitting it to the people in November. This is my feeling and this is my position, but the Convention has taken the position that the entire question be referred to the Legislature.

I feel that if we are going to make our mandate complete, to make it coherent so that we ask the Legislature to take up the basic question of majority, which is what we are really talking about, and the exercise of the privileges and responsibilities of majority, there I feel that it should be done on this basis. I would hope that before this Convention adjourns that it will take up my proposition which would do it right across the board.

MR. MANKIEWICZ: Thank you, Senator.

MR. BLACK: Mr. President.

THE PRESIDENT: Mr. Black.

MR. BLACK: Mr. President, I do not think there is any need for me to repeat the very excellent arguments that Senator Marchi has advanced toward the concept that there should be a link between the voting age and the age of responsibility for one's own actions and one's own obligations. As a matter of fact I had introduced to the Committee on the Bill of Rights and Suffrage a proposal to tie the voting age to the age of responsibility. I think now that we have chosen in this Convention to permit the Legislature to set the voting age and to reduce it from twenty-one, that Senator Marchi's proposal makes a great deal of sense and I am proud to support it.

THE PRESIDENT: The Chair recognizes Mr. Shapiro.

MR. SHAPIRO: Senator Marchi, do you have any idea how many provisions there are in the statutes dealing with the age at which you can do certain things? For instance, one of the statutes provides that you must be twenty-one years of age to be admitted to the bar. Would you repeal that in connection with the voting age?

There is another provision which relates to holding office. Suppose you had someone in Staten Island that was eighteen years of age and wanted to run for State Senator. Would you be in favor of that? Would that be included in your amendment?

There is a provision which provides that you cannot be an osteopath or doctor until you are twenty-one years of age. Would you be in favor of that?

You see, there are a great many things which go into consideration of certain privileges and rights which do not have to do with voting and the effect of your amendment would be, if adopted, to wipe out in toto every restriction of age on the statutes. Are you in favor of that?

MR. MARCHI: If I am permitted to answer, Mr. President, the amendment that is before you, Judge, does not take up the question of voting age or the question of majority, but it requires the Legislature to keep both concepts together when they act. In other words, I am proposing in this amendment—I may have done it in my proposition—but in this specific amendment, all I am saying is that the two go together and I do not see how you can separate them.

MR. SHAPIRO: Are you mandating upon the Legislature that if they should vote to reduce the age of voting to 18 that they reduce the other things to 18? All of them?

MR. MARCHI: I think that is a correct assessment, Judge. And this is a very wholesome restriction, I think, that we are placing on the Legislature, that they take up the entire question of majority and define the question of majority, and this is what I was referring to—is the manipulative and the seductive ap-

proaches which we have taken to young people, and the use we have made of them without facing up squarely to the question of the implications, the full implications, of what we are doing. I think if we do this, then the implications are clear: the Legislature will have everything before it, but to do one without the other doesn't make sense to me, Judge.

MR. KOOTA: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Koota.

MR. KOOTA: Mr. President, I rise to oppose the proposed amendments and I subscribe to the sentiments suggested by Mr. Mankiewicz. Historically, the age of majority for all purposes except for voting and the legal incidence of majority have been left to the discretion of the Legislature. Now we have got mandated by this proposition that the Legislature reduce the voting age, and I do not think that we ought to mandate the Legislature any further than we already have in in this proposition. I think the matter should be left entirely to their discretion.

The Legislature is responsive to the needs of the community, and I think it will be a mistake if we compelled the Legislature to take action in this area in the event they reduce the voting age. I therefore oppose the amendment.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: I merely want to say to my good friend, Senator Marchi, that he has given me another good reason for my resolve to vote against reducing the voting age from 21.

MR. R. J. RICE: Mr. President.

THE PRESIDENT: Mr. Rice.

MR. R. J. RICE: Mr. President, I would like to speak in favor of Senator Marchi's amendment. Last Tuesday we undid the work of Monday. By Monday evening I believe we had the elements of a suffrage article which outlined the qualifications for voting which had been hammered out and prevented a rather delicate balance in extending the franchise to the additional voters in this state.

By placing the voting age in the hands of the future Legislature, I believe we have introduced an element of instability which has presented grave doubts that have placed in jeopardy many of the other areas of expansion.

I have, for instance, the example of property requirements. I, as you probably know, am opposed to property requirements of any kind in any election. However, there are legitimate doubts that have been introduced here of placing the future of our localities in the hands of the very young, and what the New York Times calls "a very large body of immature and irresponsible people," and I feel that this suffrage article will get greater acceptance from the community at large if we will remove these doubts. I think Senator Marchi's proposition goes part of the way toward doing this because then at least we will know that the extension of the franchise will not be given to this presently immature body unless the Legislature is fully convinced that they are capable of assuming responsibility in all legal areas of life, and I would again support his amendment.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Let me say to the members of this Constitutional Convention that I have firsthand knowledge about the members of the Legislature and it is not really as bad as some of you think. They are pretty intelligent people and they are they same kind of people as you are, who were elected to this Constitutional Convention, having withstood the tests of an electorate in a campaign and

knowing the needs and wishes of their people. So don't be so sad about the fact that this great State within the next 100, 200 or 300 years will still be governed by a Legislature which represents all the people of the State.

Secondly, let me tell you, too, that with all due respect to the members of this Constitutional Convention, the electorate makes its wishes very plainly known to the members of the Legislature as to how they stand on certain facts. If you have entrusted to the Legislature the fact that they should make the decision in the future years about whether they vote at 21, 19 or 20 or 18, I was one of those who believed at 18, and I don't think you have to tie a yoke around their necks and say that when you discuss this proposition, please don't forget to discuss the majority.

I think back about five thousand years ago and I wonder if my great predecessor, that distinguished and learned gentleman by the name of Moses, who brought down the Ten Commandments, should not have brought down a couple more Commandments explaining the other ten so that we would know how to govern ourselves. I think we have done a pretty good job in the last five thousand years.

I think this is a very important amendment, with all due respect to my colleague, and I urge upon you the fact that I am sure when these things are introduced and discussed before the Legislature, a great deal of consideration will be given to these problems.

We have today on our statute books laws concerning the fact that a boy can't drive a motorboat if he is not at least 16 years old and also laws concerning marrying, drinking and a great many other things. I think it would encompass a great many problems and serious considerations on the part of the Legislature, and I say to you, gentlemen, let's have faith in ourselves and in those of us who serve the people, and I therefore urge that we defeat this amendment.

THE PRESIDENT: The question occurs on the adoption of the amendment. The Secretary will call the roll.

Those in the negative will raise their hands. Will all those in favor indicate by saying "aye." And those opposed, "nay."

The amendment is defeated.

MR. HENDERSON: Mr. President.

THE PRESIDENT: Mr. Henderson.

MR. HENDERSON: Mr. President, I offer the following amendments, waive their reading, wish to explain them briefly, move their adoption.

THE PRESIDENT: The Chair recognizes Mr. Henderson. Are you submitting one or more than one, Mr. Henderson?

MR. HENDERSON: I want to take them one at a time.

With everyone quoting various newspapers, I cannot help but be reminded of last Wednesday, in the New York Times, the next morning, when it says: "Buckpasser races in Brooklyn Handicap Saturday."

"Decision is made after fast drill in the Constitutional Convention."

Well, I just had that quote, "Decision is made after fast drill," I think we all know what happened to Buckpasser come Saturday, but since we put in the hands of the Legislature these responsibilities of deciding so many issues and probably before we leave put more power in the hands of the Legislature, I am offering this amendment to proposition 700-C by Mr. Tyler:

Page 2, line 14, strike out all after C: strike out line 15 and 16.

And on page 2, line 17, strike out all to the period and there insert the following: "Provisions may be made by statute disqualifying persons from voting if they have been adjudicated mentally incompetent or convicted of a felony. Such disqualifications are to cease upon determination of the mental disability and upon completion of the term of sentence imposed upon conviction."

Now, this amendment is very simple. It simply removes that provision with respect to property. If we are going to trust the Legislature as well about the voting age, why then should we mandate upon the Legislature that they cannot provide certain other qualifications?

Now, I point out to you that this proposition—and I would like someone from the Suffrage Committee to explain to me what it means on page 1, when they say in line 5, “every citizen.” Now, what do you mean by “citizen”? To start with, is that anyone that comes into the State of New York and lives here for three months and a certain number of days in the County and the district?

Now, it is my understanding that there is a vast difference between a citizen of the United States and a citizen of a State. And if any of the learned delegates or the judges here could straighten me out, I would appreciate it, because it is my understanding that a citizen of the United States is a citizen of every State, but you may be a citizen of a State and not a citizen of the United States. And when we are not being any more clear than we are by this language, it would seem to me then that we do not bind the hands of the Legislature so severely.

And I also in submitting this proposed amendment, point out to you that you say that by statutes you may disqualify persons from voting because of mental incompetency. Now, what is mental incompetency? Take a look at the dictionary. There may be some of us here who are mentally incompetent. Certainly the ones that can prove that they are mentally competent are those who have been committed and were discharged.

So I say, by adding this amendment, that we should, if we do not want certain requirements of literacy, we had better make it crystal clear here by explaining what we mean by mentally incompetent.

So, I think that my proposed amendment makes a lot of sense because I think under this proposal of mentally incompetent it is questionable as to whether or not you could not still have a literacy test.

I also say that since we have changed the old language that there is a grave question with respect to the conviction of a felony: and if at once a person has served his time, I think he should then be entitled to vote because he has then paid his debt to society.

And on the question again of residence, I would ask Mr. Tyler if possibly he would yield to a question, or on the question of citizen, would you explain to me, what do you mean by “every citizen”? What is the opinion of your committee?

MR. TYLER: I think the Committee had it in mind, Mr. Henderson, that a citizen of the United States and also a resident of the State who qualifies for voting privileges is a citizen to which this language refers.

MR. HENDERSON: Well, don't you think, then, when we are talking about the Constitution that we should say, even at the expense of a couple of words, a citizen of the United States?

MR. TYLER: No, I think that is implicit in the language, Mr. Henderson.

MR. HENDERSON: Well, it is my information, and according to the United States versus Cruickshank—and I don't think it has ever been changed—that the rights of State citizens and the rights of Federal citizens are different since they derive from different governing bodies, and I submit anyone who moves into the State of New York and meets the residency requirements is a citizen of New York State, even though he may be an alien.

MR. TYLER: An alien cannot vote.

MR. HENDERSON: Well, he could in New York State according to this provision.

MR. TYLER: No, he could not.

MR. HENDERSON: There is nothing that would say that he couldn't because you are not saying a U.S. citizen and they are entirely different.

And also in another case, *Arbor versus U.S. 245*, U.S. 366, which says a U.S. citizen cannot be deprived from State citizenship, State citizenship follows as a consequence of the Federal.

MR. TYLER: So what is your question now?

MR. HENDERSON: My question is simply, could anyone who is not a citizen of the United States become a citizen of New York State by merely meeting the residence requirement?

MR. TYLER: I don't think so.

MR. HENDERSON: Well, I don't think we should just guess, I think we should be positive on this.

MR. TYLER: There is no doubt in your mind, is there, Mr. Henderson, that under the present provisions of the constitution, that only citizens of the United States can vote in New York State elections?

MR. HENDERSON: In a Federal election, yes, in a—

MR. TYLER: In a State election?

MR. HENDERSON: No, not with this language.

MR. TYLER: No, under the present Constitution as it is presently written.

MR. HENDERSON: No, I don't, because you know we are taking out a lot of restrictions, we are removing many restrictions by this proposal, by this proposition that we have had in the other Constitution.

MR. TYLER: I submit, sir, that if you look at Section 1 in the present Constitution which deals with the qualifications for voters, I think you will find that the language is identical. It starts out, "every citizen".

MR. HENDERSON: That may be, but let me point this out to you, we are removing many of the requirements for voting in the State of New York by this proposition and when we do we may very simply change whether a resident of the State.

MR. TYLER: But none of the changes that are proposed have anything to do with citizenship.

MR. HENDERSON: Well, if you question it, if anyone questions, what must we do? We have to go back to the previous Constitution, don't we, and there hasn't been any change, except that anyone residing in the State, paying taxes in the State of New York—this is the present provision, paying taxes in the State of New York. Now, you are removing all of these requirements. You are removing all of the requirements by eliminating the provisions of property in particular, and if you weren't removing those, then I would agree with you. But when you take out of the Constitution these other requirements then you must revert back to the original definition of a citizen of the State and you must rely at least, I would think, on Constitutional law and the cases with we have had, and so far it says you may be a resident of a State and not be a U.S. citizen. I think this is a very serious point that your Committee should consider before we start eliminating all of the things that are in the present Constitution, and that is one of the reasons, Mr. President and fellow delegates, that I offer this proposed amendment. At least let's leave it up to the Legislature, if you trust the Legislature, as you have indicated by your previous vote, let's at least leave that up to them, don't take away their right to put some protection in the statute as to who can vote and who cannot vote.

MR. TYLER: Would you be satisfied, Mr. Henderson, if we put in "every United States citizen"?

MR. HENDERSON: I would feel a lot more comfortable about it, yes. Because I think if half of Canada moved into northern New York and lived there three months, they could vote, and I can't find any place in any research that I have done that that can be contradicted.

MR. TYLER: Might I suggest, Mr. President, that your suggestion be referred to Style and Arrangement?

THE PRESIDENT: I am sure the Committee on Style and Arrangement could clear up the language but Mr. Henderson's amendment goes beyond just that point.

MR. HENDERSON: I am raising the point, Mr. President, of the citizenship, because of its relationship to other provisions which, I think, should be in this Constitution in determining who can and who can not vote. And it seems to me that this is a substantive matter, and not purely Style and Arrangement, where we are changing from the plain word "citizen" to "U.S. citizen."

MR. BREVETTI: Mr. President.

THE PRESIDENT: Just a moment, Mr. Brevetti. Mr. Henderson has the floor.

MR. BREVETTI: Will he yield to a question?

THE PRESIDENT: Mr. Henderson, will you yield to a question from Mr. Brevetti?

MR. HENDERSON: Yes.

MR. BREVETTI: Mr. Henderson, a reading of Article 2 in the present Constitution, if I may read Section 1, provides that every citizen shall be entitled to vote at every election offices and then it goes on and on and. I submit the present Constitution does not state a United States citizen. I think it is well known and there is as much case law that when the word "citizen" is used, United States Citizen is meant. Certainly we are not here to propose a Constitution and talk about citizens of other countries. I am sure no court would rule that we may have been, or it is possible that a Canadian citizen may come into the picture. The question is, Mr. Henderson, were you satisfied with the present language of the Constitution in connection with this subject?

MR. HENDERSON: Is that your question, Mr. Brevetti?

MR. BREVETTI: Yes.

MR. HENDERSON: Yes, I was, because in the Constitution under Section 5, Article 2, it says, "that laws shall be made by ascertaining proper proof of citizens who shall be entitled to the right of suffrage are hereby established," and all of that is out the window in this proposition. That makes a great difference. That is why I said if we are going to make this very brief strictly for brevity purposes, then let's be crystal clear as to what we mean by a citizen. You have many limitations in the present Constitution with respect to voting which you eliminated by this proposition 700-C.

MR. HUTCHERSON: Mr. President.

THE PRESIDENT: Mr. Hutcherson.

MR. HUTCHERSON: Mr. Henderson, may I try, if I may, to clear up one thing with regard to the prior Constitution as it existed?

MR. HENDERSON: Surely. I will yield.

MR. HUTCHERSON: The second paragraph of the suffrage article reads that,

“Notwithstanding the foregoing provisions after January 1st, 1922, no person shall become entitled to vote by attaining majority or by naturalization.” I would think by that that no one can become a naturalized citizen of the State of New York, and therefore the reference to naturalization and citizenship is also implicit as to the United States citizenship rather than State citizenship. So my point is that I believe the reference was made originally in the first paragraph and to the second paragraph with regard to citizenship being that of the United States citizen.

MR. COOPER: Mr. President, may I address a question to Mr. Henderson?

THE PRESIDENT: Mr. Henderson, will you yield to Mr. Cooper?

MR. HENDERSON: Yes.

MR. COOPER: Mr. Henderson, since you began the discussion on this question I checked with the United States Constitution and I find the word “citizen” used in two separate places. Under Article IV, Section 2, under privileges of citizens, “the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states,” and then under Article XIV, “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.” So that by application Article XIV applying within the states, as the United States Supreme Court has already said, the citizenship of any person who is a citizen of the United States, or any naturalized citizens of the United States is a citizen of the state in which he resides. Now, doesn’t that satisfy the requirement that you raise?

MR. HENDERSON: I know to what you are referring and you are going back to the Dred-Scott versus Sanford in which at that time they held that the rights of the citizens of one state were not transferable upon change of citizenship. Therefore, the point that you are referring to—it was changed by the 14th Amendment, there is no question about it, but I still hold that the latest decision that you have said that while you may be a citizen of the United States you automatically therefore are a citizen of any state. But citizenship in a state does not mean that you are a United States citizen and we are talking purely here about a citizen of the State of New York, not about a citizen of the United States. That is precisely my point. United States citizenship by natural birth or naturalization entitles you to the same privileges in every state and the territories, but you may have additional privileges within a state and you are not required, in order to have those privileges, to be a United States citizen.

I feel very strongly, Mr. President and Fellow Delegates of this committee, that this is a matter of substance in my estimation and before we delete so many things from the present Constitution and substitute in its place, such as this proposed amendment 700-C, that we should be very careful that we have a proper definition of a citizen to whom we are referring when we are talking about submitting this to the people for their approval, and it may be the Constitution by which we will live for a number of years, and certainly it is going to be tested.

MR. DINKINS: Mr. President, will Mr. Henderson yield for a question?

THE PRESIDENT: Mr. Henderson, will you yield to Mr. Dinkins?

MR. HENDERSON: Yes.

MR. DINKINS: Did we understand you to say that one could be a citizen of the State and not a citizen of the United States?

MR. HENDERSON: That is correct.

MR. DINKINS: Thank you.

MR. HARRINGTON: Will Mr. Henderson yield to a question?

THE PRESIDENT: Mr. Henderson, will you yield to Mr. Harrington?

MR. HENDERSON: Yes.

MR. HARRINGTON: Where in the New York State Constitution is there any authorization of New York State citizenship apart from United States citizenship? Is there such an authorization in this or any other state constitution?

MR. HENDERSON: There is none, that is exactly my point, but the federal cases say that you may have citizenship in a state and you do not—and that does not necessarily make you a United States citizen, but there are also cases on the reverse that any U.S. citizen is a citizen of every other state, but a state may have citizenship within the state without you being either born or naturalized because the cases say they derive from different sources.

THE PRESIDENT: The Chair recognizes Mrs. Heidelberger.

MRS. HEIDELBERGER: President Travia, would Mr. Henderson yield to a question?

THE PRESIDENT: Mr. Henderson, would you yield to Mrs. Heidelberger?

MR. HENDERSON: Yes.

MRS. HEIDELBERGER: I have a copy of the amendments which were submitted to us and became effective January 1, 1967. Now, this one amendment, No. 6, of Article II, Section 1 of the suffrage article read, "Every citizen of the age of 21 years." This was deleted and it read—the amendment which was approved was the same—"Every citizen shall be entitled to vote." Now, it would appear to me that as a member of the Legislature at that time when the same term was used in both cases, that perhaps you as one who, I assume, facilitated the passage of this amendment by the people after it was approved by the Legislature, perhaps you would like to enlighten us who are members of the Bill of Rights and Suffrage Committee as to what your determination was at that time.

MR. HENDERSON: I repeat, Mrs. Heidelberger, that at the time that was passed there were other provisions in our Constitution which are now being deleted by this suffrage act or Proposal 700-C and in those were that laws shall be made for ascertaining by proper proof the citizens who shall be entitled to the right of suffrage hereby, and there is nothing in the proposal which you have submitted to us that contains that same provision. Now, you have got to read this altogether, you just can't pick it out of mid-air. Surely the proposition that came to us the people approved effective 1967 was an amendment to a Constitution which contained many other provisions which are being deleted, and that is why I raise the question now about the citizenship.

MRS. HEIDELBERGER: My question was what was your definition of every citizen then, as now.

MR. HENDERSON: My definition of every citizen then was as it is provided in the Constitution as a whole.

MRS. HEIDELBERGER: A citizen of the United States.

MR. HENDERSON: That is correct.

MR. FASTENBERG: Mr. President, will Mr. Henderson yield for a question?

THE PRESIDENT: Mr. Henderson, will you yield for a question to Mr. Fastenberg?

MR. HENDERSON: Yes.

MR. FASTENBERG: Mr. Henderson, will you agree with me that the United States Constitution is the supreme law of the land?

MR. HENDERSON: I do.

MR. FASTENBERG: And do you agree with me that the Constitution provides that any person born or naturalized in the United States is a citizen both of the United States and of the state wherein he resides?

MR. HENDERSON: I do.

MR. FASTENBERG: Now, can you explain to me how it is possible for a person to be a citizen of any state without being a citizen of the United States at the same time?

MR. HENDERSON: I think I can.

MR. FASTENBERG: Go ahead.

MR. HENDERSON: All right. As I said earlier—you may not have heard me—that United States Supreme Court decisions in the United States versus Cruickshank—and I cite you the 92 U.S. 542, which simply says, “The right of state citizenship and the rights to federal citizenship are different as they derive from different governing bodies,” and there is nothing that says—well, whatever the years it hasn’t been changed. So there is nothing which says you can’t grant greater privileges of citizenship within a state than is granted by the federal government.

MR. BRYDGES: May I make a suggestion, Mr. President?

THE PRESIDENT: Senator Brydges.

MR. BRYDGES: I simply wanted to say that I think all of us in this room know what we understand by the use of the term “citizen”. If there is any doubt about what we mean please let Style and Arrangement fix it up.

THE PRESIDENT: That is what I suggested earlier. The question occurs upon the adoption of the amendment. The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The question occurs on the adoption of the amendment. All in favor of the amendment indicate by saying aye; those against, no. The amendment is defeated.

May I assume that there are no other amendments to be offered?

MR. BROMBERG: Mr. President, I have no amendments, but I would ask Chairman Tyler to yield to several questions with regard to the intent of the suffrage article.

THE PRESIDENT: We will come to that. We are not at that point yet. I will call you in a moment.

I assume there are no other amendments to be offered. I would like to say that we now have before us the proposition as it appears on the calendar, which is 700-C. No amendments were adopted today, so that the bill is before us in its form as it appears on the calendar today, 700-C. Is there any discussion on the proposition?

Now, Mr. Bromberg, do you want to ask a question?

MR. BROMBERG: Yes.

THE PRESIDENT: Mr. Tyler, would you yield to Mr. Bromberg, please?

MR. TYLER: Yes.

THE PRESIDENT: Mr. Bromberg.

MR. BROMBERG: Mr. Tyler, Section 1-A, B and C set voting qualifications of citizenship, age and residency and define residency. Section 1-C provides that neither property qualifications nor any other qualifications or test for voting may be imposed. Both sections speak in broad language covering all elections. Is it therefore intended that the qualifications of citizenship, age and residency set forth shall be the only qualifications for voting at any election of any kind, including but not limited to general, special, local, town, village, school district, special districts of any kind and that such qualifications shall be the only qualifications for voting on any question, including but not limited to local and special district referenda and propositions?

MR. TYLER: Your question answers itself. It is yes.

MR. BROMBERG: I have another question. Section 3 of Proposition No. 700-C mandates statutory provisions for registration and voting of all qualified voters, including those not appearing in person, and also mandates statutory provisions for permanent personal registration. Is it intended that this section shall cover all elections of any kind, including but not limited to general, special, primary, local, town, village, school district and special districts of any kind and that the section shall cover all questions, including but not limited to local and special district referenda and propositions?

MR. TYLER: The answer to that question is yes also, Mr. Bromberg.

MR. BROMBERG: I have one last question. Section 3 mandates absentee registration and then mandates "permanent registration of voters upon personal application." This semantic description of permanent personal registration is the same as appears in present Section 6 of Article II of the present Constitution. Section 5 of Article II of the present Constitution mandates absentee registration also. Under those provisions of the present Constitution the Legislature provided in 153-A of the Election Law for absentee registration under permanent personal registration. Is it intended that this shall continue and that absentee registration shall be provided for permanent personal registration?

MR. TYLER: The answer is yes.

MR. BROMBERG: Thank you.

THE PRESIDENT: Mr. Koota.

MR. KOOTA: Mr. President, simply on the point of procedure. In the course of debate Mr. Fisher stated, in reference to page 2, line 3, provision forbidding the Legislature to reduce the statute to an age not less than 18. Mr. Bartlett and Mr. Beame both called attention to the fact that this would, on its face, appear to authorize the Legislature, successive Legislatures to raise and lower the ages. Now, as to procedure it was suggested that that matter be sent to Style and Arrangement. After Style and Arrangement reports I take it that this proposition goes to third reading? Is that correct?

THE PRESIDENT: That is correct.

MR. KOOTA: So that we will have an opportunity to see the proposed language covering that situation?

THE PRESIDENT: Yes.

MR. KOOTA: Thank you.

THE PRESIDENT: Mr. Cooper.

MR. COOPER: Mr. President, you answered in the affirmative to a question just asked by Mr. Koota which differs from my recollection of the answer given by Mr. Fisher to a question that was raised regarding that provision, now euphemistically referred to as the Fisher amendment.

Mr. Fisher, if you recall, on the day this was discussed, disagreed with Mr. Bartlett's interpretation, but what Mr. Koota asked, if the Style and Arrangement can clarify that, and it can, and on third reading you still have an opportunity to amend or to discuss the proposition as you like. What I would like to ask with respect to that proposal, do I understand that if this proposition passes, if I understood Mr. Fisher, that the only right the Legislature would have would be to lower the voting age but not to increase it?

THE PRESIDENT: That's right.

MR. COOPER: The only way to change that statute would be by constitutional amendment?

THE PRESIDENT: Well, Mr. Fisher can answer that part for himself, but I have my own interpretation which I don't want to use.

MR. FISHER: Mr. President, it is my firm belief that once the Legislature reduced, it could not even go up by constitutional change, because that would disenfranchise and violate the Federal Constitution.

In any event, it is my intent, and I don't think it needs it, but if it does, the Style and Arrangement can change it, so that the Legislature cannot go up once it goes down.

MR. COOPER: Do I understand what you are saying, then, in answer to the last question is that notwithstanding what you said earlier in the debate, that this section was in order to enable the Legislature to gain by experience the knowledge necessary to act—

MR. FISHER: Downward.

MR. COOPER: Downward, that once having acted, could the groups that were granted the franchise—the franchise could never be removed even though it was granted by Legislation, is that what you are saying?

MR. FISHER: Of course. You can't disenfranchise anybody once you have enfranchised them.

THE PRESIDENT: Any other discussion on the proposition?

MR. BARTLETT: Mr. President.

THE PRESIDENT: Mr. Bartlett.

MR. BARTLETT: Mr. President, I am prepared to vote to advance the proposition before us to third reading, but I think we should always understand that this does not preclude our considering again the substantive questions within the suffrage article when we consider it again on third reading.

I would hope, Mr. President and ladies and gentlemen, that in the time—

THE PRESIDENT: The Committee on Style and Arrangement can't, but we can.

MR. BARTLETT: We can offer amendments.

THE PRESIDENT: Yes.

MR. BARTLETT: So in effect we can consider again substantive questions.

THE PRESIDENT: I thought I made that clear, Mr. Bartlett. You are right.

MR. BARTLETT: I would like to suggest to all of us here that since last Tuesday, I sensed an uneasiness among the delegates to this convention as to the manner in which we resolved the voting age question. I am still hopeful, Mr. President, and ladies and gentlemen, that we can when we finally conclude our

work submit to the people a Constitution which fixes the voting age of this State.

We have taken the trouble to define the number of days in the district, the number of days in the county; it seems to me clearly this is the kind of thing that ought to be in the Constitution, and I want to say for myself, and I think I speak for a great number of delegates, that I sensed a mood to compromise on the age. If we show some willingness towards reaching a concensus here, because, ladies and gentlemen, without consensus among the delegates we will not have a successful product, it won't be adopted by the people next fall. I hope we will all think about means by which we can resolve this question, because I sense a strong uneasiness among all of us as to the manner in which we disposed of it last week.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, my distinguished colleague on the other side has turned over to me the privilege of speaking for both of us, one of the rare occasions, I am sure, it will happen in this Convention.

MR. BRYDGES: It depends on what you say.

MR. WEINSTEIN: I was going to echo Mr. Bartlett's sentiments, except I don't agree with them. I know of no proposition in this whole house that will receive the unanimous approval of the whole Convention. If the day ever comes I will think we have reached Utopia in a shorter space of time than I felt we could.

I don't detect any uneasiness, except that I do detect an uneasiness that we ought to get toward completing a Constitution which enjoys a majority opinion of the Convention delegates and which we can present to the people so they will be the final arbiters of what we have manufactured in this Convention. I have read with great deal of interest the proceedings of previous Conventions and I find that we today, even though we are advancing to the twentieth century, are not performing very much different than the others.

I think we ought to move our propositions as quickly as we can to a third reading, bearing in mind what has been said so many times and which I hasten to repeat, the ball game is not over, you have a right to make suggested amendments, and I would suggest without attempting to restrict the people's right to be heard in this Convention, that a paucity of words and a majority of ideas may bring us quicker to the millennium of writing a Constitution in 1967.

I move the proposition.

THE PRESIDENT: The question now occurs upon the advancement of the proposition.

The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: All those opposed will please raise their hands. This is to the advancement of the proposition. The Secretary will announce the results.

THE SECRETARY: Ayes, 160; noes, 19.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

MR. vanden HEUVEL: Mr. President.

THE PRESIDENT: Mr. vanden Heuvel.

MR. vanden HEUVEL: Mr. President, with the passage of this Suffrage article I would ask your permission to say a few words, primarily for the benefit of the Press, as to the progress of this Convention.

In the history of the nine Constitutional Conventions, at no time has a complete article—

**THE PRESIDENT:** Mr vanden Heuvel, if you don't mind please hold your statement until the calendar has been completed.

**MR. MANGANO:** Mr. President and members of this distinguished Convention. I am happy to state at this time that we have visiting with us, accompanying a very charming lady, Professor Cohen and Mrs. Cohen. They are accompanying the wife of a distinguished member of this body, and I would like at this time to acknowledge the presence of Mrs. Leah Sheen. (Applause)

**MR. MANGANO:** While I am on my feet, as I said before, I am the perennial well-wisher, I have been reliably informed that a member of this body, one of our delegates, a very distinguished member of this body, who is at the present time the Vice Chairman of the Committee on Education, and who has had distinguished career in the educational field has reached three score and six today, and I am sure that you will suspend the edict as far as applause is concerned, and may I in behalf of the members of this body extend a happy birthday to Mr. Thad L. Collum. (Applause)

**MR. MANGANO:** Mr. Speaker, I hope that I have not taken the prerogatives away from Mr. Brydges, and with all due respect to him I took it upon myself to make that announcement in that we transcend political barriers when it comes to birthdays, we recognize the Democrats, we have also recognized the Liberal Party, and I am very happy to have recognized the Republican Party. While I am on my feet I also wish to express the sentiments of the delegates here present, our best wishes to a distinguished member of this body who is celebrating his thirty-third wedding anniversary, and I refer to the Honorable Harold Fisher and his wife. (Applause)

**THE PRESIDENT:** The Chair is very pleased to welcome Mrs. Sheen and Dr. and Mrs. Cohen to the deliberations of the House, and extends the felicitations of the chair and I am sure of everyone to Mr. Collum on his birthday, and also to Mr. Fisher who is celebrating his thirty-third wedding anniversary today. Good luck to all of you. (Applause)

**MR. LEVY:** Mr. President, it wouldn't be fair if I didn't take this opportunity—and I don't get too many—of introducing daughters, because I have four sons but there is a lovely daughter here of my companion, Judge Lawless, his lovely daughter Barbara.

**THE PRESIDENT:** The Chair is pleased to welcome Miss Lawless to the deliberations of the Convention and trust she will enjoy the same. (Applause)  
Lay aside calendar. Page two. Proposition No. 1334. Senator Greenberg.

**MR. GREENBERG:** This proposition, Mr. President, continues a provision in the present Constitution which has to do with elimination of discrimination in taxing between federally chartered institutions and state chartered institutions. One difference in language has been made, namely in the propositions before us we have added the word "banking" which did not exist, which does not exist in the present constitutional provision. It has been applied only to banking corporations. We know of no other federally chartered institutions, corporations to which this matter of equal treatment in taxation would apply, and therefore in writing the new Constitution and this particular provision, we have made it clear that this equality of treatment applies only as between federally chartered institutions and state chartered institutions.

The Committee has felt that this equality of treatment be continued. It provides for strengthening the dual banking system which has existed for many years in the State, and it does continue what we believe to be fair and equitable treatment, namely the corporations engaged in similar business, meaning the banking business, shall be treated equally with respect to taxation, and I urge the adoption of this proposal, or advancement.

THE PRESIDENT: The advancement. Right. Mr. Cusick.

MR. CUSICK: Mr. President, as Senator Greenberg has so well stated, the provisions in the present Constitution provide that all banks engaged in business in this State shall receive equal tax treatment.

This proposition continues and buttresses that policy and strengthens the position of New York State chartered banking institutions.

It has the approval of the minority members of Senator Greenberg's committee from which it emanated, and speaking for those minority members, I urge its approval.

THE PRESIDENT: Any further discussion on this proposition? The question now occurs upon the advancement—Mr. Bromberg.

MR. BROMBERG: I am a member of the Committee on State Finance. I would like to speak, and perhaps I may be a lone voice, but I would like to speak in opposition to the advancement of this proposition.

When we put to the people of the State of New York the question of whether there should be a constitutional convention, and when we campaigned—at least when I campaigned for my election, I am sure others did the same—we told the people that we would streamline our Constitution. By streamline I take it we didn't mean we would cut out some words here and there, and that we would make it read better, but we meant we would bring it up to date with our times, that we would make it a basic organic constitutional document containing basic mandates and prohibitions and the outline and structure of our government and nothing else.

I take it we did not mean that we would continue special provisions meant to protect special groups against the legislature. I take it we meant, and we have so stated in this body, that we would give our Legislature the freedom to act which it needs and which the citizens of the State of New York need in order to progress in the future.

Now, we come to his provision, the first we are discussing with State finance and taxation, and we are prepared to advance to third reading, and presumably to pass into the Constitution at a later date, a very minor proposition taking care of a very special small group. And for what end? We are not protecting federally chartered banks, nationally chartered banks, because they are already protected under federal statutes. We have here, and how it got into the Constitution in 1938 I don't know, a provision which is meant to protect State chartered banks against discrimination by the Legislature of the State of New York. I submit to the members of this body that this is not a protection needed in the Constitution. I suppose banks would worry and I suppose on the overcoat theory, we ought to keep in the Constitution every protection that everybody has, but that is not our job. I submit to you no Legislature would discriminate against State chartered banks and that we should not have this in the Constitution.

Now if this were the only provision of this kind, probably I wouldn't arise, but these things will come up over and over again as every special group which has a special protection by constitutional mandate will insist on the continuation of that special protection by constitutional mandate to which I submit they are not entitled.

Everybody is entitled to stand free and equal before the Legislature and Governor of the State of New York and receive treatment at the hands of the Governor and the Legislature of the State of New York and not be entitled to special constitutional protection.

We are worried that the Legislature will discriminate against state chartered banks. The Legislature of the State of New York has the power to impose the personal income tax and may raise it to whatever graduated height it pleases. The Legislature of the State of New York may impose taxes upon the passage

of an estate which could be in effect confiscatory. The Legislature of the State of New York could pass a 15% sales tax. The Legislature of the State of New York in the exercise of its police power could so order the banking communities as to practically drive it out of business if it desired. These powers we permit to the Legislature. But this particular provision, and I submit for no reason other than the fact that it is in the Constitution, will now be passed and move on to our new Constitution.

I can only submit to you that this is the first step I believe among many. I submit that we should not take it. I submit that we should follow the mandate which I think we have from the people of the State of New York to draw a real Constitution and not a series of protections for special groups.

THE PRESIDENT: The Chair question is on the advancement of the proposition. The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Will all those opposed please raise their hands. The Secretary will announce the results.

THE SECRETARY: Ayes, 164; noes, 15.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

We now take up on page 2 Proposition No. 1337.

The Secretary will read.

THE SECRETARY: By the Committee on the State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to exempting certain public pensions from income taxation.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Mr. Greenberg.

MR. GREENBERG: Mr. President, in connection with this proposition I offer the following amendment, move its adoption, waive its reading and ask for an opportunity to explain it.

THE PRESIDENT: Without objection.

MR. GREENBERG: Mr. President, Section 5 of Article XVI in the present Constitution reads as follows: "All salaries, wages and other compensation except pensions paid to officers and employees of the State and its subdivisions and agencies shall be subject to taxation."

The proposition before us eliminates the direct statement with respect to the right to tax salaries and wages but continues the exemption from taxation with respect to pensions now enjoyed by State and municipal employees. However, in the existing Constitution the words used with respect to the State are "its subdivisions and agencies."

In the proposition before us as it is printed, we use the words "civil divisions." We think "civil divisions" is a better term. However, as of now we do not as yet have a definition of "civil divisions," which I have been told we will eventually have, and for that reason I am offering the amendment so that the language in the proposition is restored to what is now contained in the constitutional provision as I read it.

Now, if I may talk now—or shall we have the amendment disposed of first?

THE PRESIDENT: We will have the amendment disposed of first, Senator Greenberg.

MR. BURNS: Senator Greenberg, would you kindly repeat the amendment?

MR. GREENBERG: The amendment takes out the words "civil division" on line 5 of the printed bill and substitutes in its place "subdivisions and agencies." In other words, we are restoring to the proposition the language used in the existing Constitution to include those employees who are to be covered by this exemption from taxation.

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor, indicate by saying "aye." All those opposed, say "no." The amendment is adopted.

We now have before us the proposition as amended. Senator Greenberg.

MR. GREENBERG: Mr. President, in order that we may all understand the background, I think it is a good idea to say a few words about the history of this amendment. Going back to the late 1919's and 1920's, around the time of the century when we first had our federal income tax and state income tax laws, salaries of judges and certain constitutional officers of the states were held by court decisions to be free from income tax imposed by the federal or state governments. As a matter of fact, one of the earlier cases on the subject applied only to those federal judges who were appointed before the federal income tax took effect.

Later on, around 1925 in another Federal Court case, this freedom from income tax was made applicable to the salaries of federal judges regardless of when they were appointed, either before or after the law took effect. The Attorney General of the State in those years, in opinions rendered by him, held that the same freedom from taxation, income taxation, applied to constitutional officers of this State.

In any event, coming along to the 1930's, the courts began to change their thinking and some of the cases began to hold otherwise and, as a matter of fact, in 1937 the State of New York passed a statute, the substance of which was that the salaries of judges and state employees, constitutional or otherwise, were subject to income tax.

Then along came the 1938 Convention—

MR. BREWER: Mr. President.

THE PRESIDENT: Will you suffer an interruption, Senator Greenberg?

MR. GREENBERG: Yes.

THE PRESIDENT: Mr. Brewer.

MR. BREWER: Will Senator Greenberg yield for a question?

THE PRESIDENT: Would you yield for a question, Senator Greenberg?

MR. GREENBERG: Yes.

MR. BREWER: Senator, is this explanation concerning the proposition which has just passed?

SENATOR GREENBERG: Nothing has passed. The only—

MR. BREWER: I mean the amendment.

MR. GREENBERG: Well, it has to do with the entire proposition.

THE PRESIDENT: Mr. Brewer, the proposition has not been advanced or passed yet. We just adopted the amendment and we are now discussing the proposition with the amendment.

MR. BREWER: I see. Thank you very much.

MR. GREENBERG: In 1938 at the Constitutional Convention, some dele-

gates felt that in order to remove any possible existing doubt with respect to the right of subjecting the salaries of State officials to income tax, that this section should be included, saying affirmatively, definitely, that these salaries and wages were subject to income tax; and in that same section there was included the exemption from taxation with respect to pensions,—pensions being that portion of the retirement allowance which is represented by the moneys contributed by the State or the municipality.

Now, thirty years later, or twenty-nine years later, we feel there is no doubt that our salaries, yours and mine, as well as those of every other State official, are subject to income taxation by the State of New York, and for that reason we have omitted the affirmative, positive part of Section 5 as it exists now. These words are not necessary.

However, the Committee has felt, and with this conclusion I can understand there may be some honest differences of opinion, but it was the conclusion of the Committee that the exemption which these Civil employees enjoy shall be or should be continued. However, it was also our aim and intention—and I want to make this crystal clear—as some of my Senate Colleagues know, I am wont to try to do—I want to make it perfectly clear that it is our intention by this language to continue to give to these Civil employees the freedom from income taxation which they now enjoy. In our opinion, fortified by Court interpretations, these people do not enjoy today any freedom from any other kind of taxation other than from income taxation, and for that reason we have added the word “income” into the article as it is before you just before the word “taxation.”

There have been some aroused Civil servants, Civil employees, who have insisted or who have tried to insist that we use the exact same language which we now have. And I have made it again crystal clear to them as late as last Thursday afternoon at a meeting in my office in New York that insofar as I was concerned personally, I cannot speak for anyone else—but myself—I have no intention of writing language which some day may be interpreted to grant these people more than exemption from income taxes, as much as they would have liked to have language which some day in the future, according to their ideas, might possibly be interpreted as other than what it has been thus far.

And so I repeat: this provision continues to give these people exactly that which they now have and which I believe they are entitled to have, and I hope this will pass.

SENATOR CORNELL: Mr. President.

THE PRESIDENT: Senator Cornell.

SENATOR CORNELL: Will the Senator yield to a question?

THE PRESIDENT: Will you yield to Senator Cornell's question, Senator Greenberg?

MR. GREENBERG: Yes.

MR. CORNELL: Bearing in mind that the present language as it is in the Constitution takes up two and a half lines of space, I have two prongs to the question: one, is there any change in substance between the net total of the present language and the former language that is presently in the Constitution?

MR. GREENBURG: Dollar-wise, Senator?

MR. CORNELL: Is there any change in substance whatsoever between the language of the old section as it is and the new language?

MR. GREENBERG: You are referring to any change, dollar-wise?

MR. CORNELL: In substance, any substantial change?

MR. GREENBERG: The answer is no.

MR. CORNELL: Number two, then what advantage has there been? I think the members of the Convention should know—there must have been some advantage, some reason for stating negatively what has already been stated affirmatively and has been on the books for a good long time. What was this reason for the change in language?

MR. GREENBERG: With respect to that portion of the section as it now exists, with respect to the right to tax the salaries and wages of State officials, State employees, we think there is no further need, it is superfluous. It adds nothing to what the Legislature has a right to do, and for that reason those words—everything in the existing section has been eliminated excepting the words “except pensions”. That is Section 5 of Article 16.

What is the second question, Senator?

MR. CORNELL: The second part of the question was your reasons for changing the language from negative language, or positive language rather, to negative language, and your answer is that certain of those words—I think they are probably three words—were superfluous.

MR. GREENBERG: All the words were superfluous excepting the words “except pensions”.

MR. CORNELL: Well, you have substituted other words so that the net saving is not more than four or five words.

MR. GREENBERG: I don't know. I did not count the words but I also know this: Insofar as I am concerned that there is absolutely no room for ambiguity in my mind, at least, and I hope in the minds of any court that may have to resolve any possible questions that may be raised,—as there is no doubt in my mind the language which we have used in the proposition before you makes it crystal clear that it is only income tax exemption which will come from this proposition if it is advanced and passed in this form.

MR. VAUGHN: Mr. President.

THE PRESIDENT: Mr. Vaughn.

MR. VAUGHN: Will Senator Greenberg yield to a question, please.

THE PRESIDENT: Senator Greenberg, would you yield to a question by Mr. Vaughn?

MR. GREENBERG: Yes, Mr. President.

MR. VAUGHN: Senator, can you tell me if federal pensions are exempt from New York State income taxation?

MR. GREENBERG: No.

MR. VAUGHN: Well, can you tell me if any consideration was given to exempting the pension of federal employees, such as postal workers?

MR. GREENBERG: Mr. President, the answer is no. Let me say, Mr. President, the answer is no because we are dealing here with State employees, employees of the State and its municipalities, and not with federal employees.

But I can give you another answer as far as I am concerned: This present exemption with respect to State employees as of now means \$10,000,000 a year to the State. In the years ahead, with tremendous increases in the number of civil servants, civil employees, that \$10,000,000 figure is going to increase rapidly. And if we were to do the same with respect to federal employees, you can be sure that it would mean many, many more millions of dollars lost to the State.

Furthermore, the basic philosophy behind this exemption which we grant to State employees is because we consider this in the nature of a fringe benefit

which we, the taxpayers of the State of New York, are ready and willing and feel that these employees of ours should enjoy; and in the opinions of many of us for very, very good reasons.

Now, if federal employees—if the level of income which the Federal Government pays them or provides for them is not sufficient to take care of them, then the quarrel should be with the Congress, for the Congress to increase their incomes.

MR. COOPER: Will Senator Greenberg yield for a question?

THE PRESIDENT: Senator Greenberg, will you yield for a question by Mr. Cooper?

MR. GREENBERG: Yes.

MR. COOPER: Does the meaning of this section apply to authority employees?

MR. GREENBERG: Yes.

MR. COOPER: In other words, what you are saying then is that, for example, employees, let's say, of the New York City Transit Authority?

MR. GREENBERG: Yes.

MR. COOPER: They would have their pensions exempt from taxation?

MR. GREENBERG: I think the employees in the Transit Authority belong to a City retirement system and all of these retirement systems are joined up or hooked up with the State Retirement System. They are exempt. They would be exempt, as they are now.

MR. COOPER: How about Port Authority and other authorities?

MR. GREENBERG: There is a difference between the Port Authority and other authorities. If you were to talk solely of authorities created solely by and for the people of the State of New York, the answer is definitely yes. I am not prepared, although I see a very good counsel from the State government shaking his head in the affirmative, and I will accept his word for it. I wasn't as certain about Port Authority because that is a by-state arrangement. But as to every authority that is created by the State for the State, the answer is yes.

MR. COOPER: Would you also say that with respect to this section? Did your committee consider that the Civil Service employees, which have been enlarged a great deal by the inclusion and by the absorption of municipalities of authority, that the collective bargaining agreements which have now become rather common among Civil Service employees, that these collective bargaining agreements and their implications were considered by your committee when you drafted this section?

MR. GREENBERG: The answer is no.

Mr. President, let me just repeat again. We have tried, and I think we have successfully accomplished, the purpose in treating this section, namely, that we continue to give these people that which they enjoy now. We did not in any way want to change the rights that they enjoy under the existing Constitution, and that is what we tried to do,—not to take anything away from them.

MR. COOPER: What I had in mind, Senator, was simply this: That when a municipality or a governmental agency assumes the function of absorption of large functioning bodies, such as occurred in the City of New York with the Transit Authority, a great number of people which were formerly not Civil Service employees, suddenly became Civil Service employees, and whereas their pensions prior to that time would be subject to income taxation, by the absorp-

tion, they immediately acquired a fringe benefit which previously had not been free from taxation.

What I was asking you simply in effect was the impact, the effect on the State by the inclusion of this kind of section.

MR. GREENBERG: When these people were taken out of private employment and became civil servants, Civil employees, then they would enjoy all of the rights of any Civil employee under the Constitution with respect to pensions, the freedom from income tax on their pensions, if and when they retire.

MR. COOPER: Even though for many years prior to that time, they had no such contractual arrangement?

MR. GREENBERG: Well, Mr. Cooper, if I were working for a bus company and then I become an employee of the City of New York in some other department, does that mean I shall never have the benefit of the freedom from income taxes on a pension which I might finally some day earn from the City of New York? That is what you are saying.

MR. COOPER: No, that was not the implication of my question. The implication of my question is that an employee might work for twenty years for a private concern and the pension or the contribution which he made for twenty years would have been part of, or subject to, income taxation; suddenly he becomes a part of a system and the twenty-year increment which he has earned over those periods suddenly becomes free from income taxation. That is simply what I am asking.

MR. GREENBERG: Mr. President, we are talking here about a state-paid pension and the portion that the State contributes or the municipality contributes. That is the part that is free from income tax when the employee retires.

And would you have the State tax its own monies?

MR. COOPER: Are you asking me a question now?

MR. GREENBERG: Rhetorically.

THE PRESIDENT: Mr. Drohan.

MR. DROHAN: Senator Greenberg, will you yield for a question, please?

THE PRESIDENT: Will you address your remarks to the Chair, please?

MR. DROHAN: Mr. President, would you ask Senator Greenberg to yield for a question?

THE PRESIDENT: Senator Greenberg, do you yield for a question?

MR. GREENBERG: Yes.

MR. DROHAN: Senator, as a very practical matter with particular reference to the transit employees in the City of New York, isn't it a matter of fact that those pensions which were private pensions, which those employees now receive since they have retired, are still subject to taxation? And if I told you it was so, would you believe it?

MR. GREENBERG: Oh, sure, any portion in the retirement allowance of these people that was contributed by the old IRT or BMT is still subject to income taxation. It is only that portion of the retirement allowance represented by the money paid by the State or the municipality that enjoys this freedom from taxation.

MR. REIDY: Mr. President.

THE PRESIDENT: Mr. Reidy.

MR. REIDY: Senator Greenberg, would you yield to a question, please?

MR. GREENBERG: Yes.

MR. REIDY: Isn't it a fact that starting this year, I believe, the State picks up the entire contribution formerly made by the employees of the State?

MR. GREENBERG: Yes, Mr. Reidy.

MR. REIDY: That is over 80% now, I believe. In any event, the State is going to pick up the entire contribution so that these new employees coming in from now on—and I have no quarrel with the present language in the Constitution protecting all the present State employees, because they made contributions—but under your amendment and if the present amendment stays in the Constitution, all the new employees coming into the State employment in the future as State employees, even though they make no contribution to their own pension, will be exempt from any income taxation; is that correct?

MR. GREENBERG: That's correct.

MR. REIDY: Then is it not so that you are putting a burden on every other taxpayer of the State of New York to pick up any contribution that those employees would have made? You mentioned \$10 million, for example, and you say it is still going up. As I say, I have got no quarrel with the present Constitution protecting the present employees, but I think you are going overboard completely in exempting future employees that have made absolutely no contribution.

MR. GREENBERG: I lost you, Mr. Reidy.

THE PRESIDENT: Mr. Reidy, would you please repeat your question.

MR. REIDY: I think I got an answer from the Senator. Thank you.

THE PRESIDENT: Mr. Berry.

MR. BERRY: Mr. President, Delegates, I agree with everything Senator Greenberg says. I am very sympathetic with his objective to modernize and streamline the Constitution and place it in line with existing court decisions. I nevertheless feel that as a matter of judgment I question whether it is desirable to change these four lines, even though we save one line by reducing them to three.

I understand that the headquarter organizations of Civil Service employees, after having studied this with their attorneys, have come to the conclusion that this will not be detrimental to them, but I do not know whether we can explain this all the way down the line to all the locals. When they see a cherished provision in the Constitution which they regard as sort of a pledge of the State's good faith changed, people cannot help but think that there must have been some reason for the change; and no matter how much we explain it to them, I question whether we can satisfactorily convince them. And in order to eliminate all unnecessarily controversial matters, I see no reason why this section should not stand as it is.

I see no objection to, for example, providing that all salaries, wages and compensation should be subject to taxation. In fact, there is a slight change there because by taking that out, conceivably a Legislature in the future could grant an exemption to State employees.

MR. GREENBERG: They can do it right now, Mr. President.

THE PRESIDENT: Senator Cornell.

MR. CORNELL: Mr. President, I believe that every delegate in this body has probably received at least a dozen of these bulletins from the Civil Service Asso-

ciation. This was put out by the Civil Service Council on the Constitutional Convention which includes all and covers all of the associations listed on the back, including the Civil Service Employees Association. So that you can understand that there was a little bit of confusion in the ranks here, particularly in my mind, the language of this section, in commenting upon this particular section—the summation was Article XVI, Section 5: “Must be retained verbatim.”

When the new language came along, I went along. We analyzed the changes in language and in substance we came out at the end to exactly where Senator Greenberg’s proposal brings us, namely, that substantially and in toto there is no change in substance, although the language has been turned around. But you can also understand my confusion when I got telegrams, one from the Council stating that they wanted the old language, and the other from the Civil Service Employees Association that they preferred that they wanted the new language. However, this has been reconciled so that you can go back in the event that any questions are being asked from any of these associations and you can say that the last word as of Friday afternoon was that the new language was acceptable to these organizations.

Now I point out also and I call attention to those who voted in the negative on the last proposition involving the banking laws that this is one of a number of propositions that the members of the employees in the State and all of the localities deem to be vital to their interests.

Now the same question arises: Shall we leave this to the Legislature or shall we guarantee to them in language the same or substantially the same the rights that they have been entitled to and have depended upon for their lives and which to them means so much in their pension rights for the future, and they are concerned. Many of these people are not versed with the law. They are used to this old language.

But I point out that this is another case—well, let us call it a vested right. They believe they have certain vested rights under the Constitution. Now, we are here to say whether those rights are to be continued or not, and I think we are voting on the proposition that arose with reference to the banking issue, and I believe we will undoubtedly find a very large majority in favor of the proposition.

MR. BLOOM: Mr. President.

THE PRESIDENT: Mr. Bloom.

MR. BLOOM: Mr. President and ladies and gentlemen: On May 8th I introduced a proposition, Number 65, which for all intents and purposes was the present article 16, Section 5, and the reason that I introduced it was that I thought that this article had been court tested up and down since 1938. I don’t have any violent opposition to Senator Greenberg’s proposition, but a good many of the delegates here introduced propositions similar to mine, and I wish to say this; that I think my proposition, or the proposition as it is in the Constitution now has been tested in the courts and, as Senator Cornell and a few other of the delegates have stated, there is a possibility here that we are asking for litigation throughout the State covering this, and for that reason I, for one, would like the language in the Constitution now to stay the way it is and I would ask Senator Greenberg to please, if he can, amend his proposition to read as it now presently is in the Constitution, Article 16, Section 5, to remain the same. I don’t think there are that many words saved here, but we may save a lot of court litigation. Thank you.

MR. GREENBERG: Mr. President, I think I have said enough on the subject by way of answer to Mr. Bloom’s question and I hope he understands.

MR. BURNS: Mr. President.

THE PRESIDENT: Mr. Burns.

MR. BURNS: Mr. President, would Senator Greenberg just respond to one more question?

THE PRESIDENT: Senator Greenberg, would you yield to Mr. Burns?

MR. GREENBERG: Yes.

MR. BURNS: Senator Greenberg, just for the record now, and you responded very well to Mr. Cornell's question before regarding the employees, and you indicated—and I am going to repeat now what you said—that this amendment just eliminates surplusage, language, wages et cetera, and you said that all of the rights of the employees are retained in the proposition before us. Let me ask one more question now. Is it your understanding also, Senator, that all of the present rights, if any, of the employers, all of those employers who are also involved with pensions, however that may be now interpreted, also remains unchanged?

MR. GREENBERG: There isn't any doubt about that.

MR. SHOEMAKER: Mr. President, would Senator Greenberg yield for a question?

THE PRESIDENT: Senator, would you yield to Mr. Shoemaker?

MR. GREENBERG: Yes.

MR. SHOEMAKER: If I read the old language of the present Constitution correctly, the last word is "taxation", it doesn't say "income taxation".

MR. GREENBERG: That is correct.

MR. SHOEMAKER: Now, under the new language, if by any chance—and I will use a horrible word here—that the Legislature should ever see fit to tax intangible personal property, under the language of the new bill then those pensions could be taxable, is that correct?

MR. GREENBERG: That is correct.

MR. SHOEMAKER: Thank you.

THE PRESIDENT: The question occurs upon the advancement of the proposition. I am sorry, Mr. Bromberg.

MR. BROMBERG: I would just like to say to this body that we are now taking step number two, as Senator Cornell so aptly described it. We have here a situation where another special interest group is seeking the protection of two overcoats for its own special purpose, and I suggest to you that this should not be countenanced by this body, that there is no reason in fairness and in equity that this constitutional provision should be continued. I think it is important to know just exactly what we are talking about. Federal employees' pensions are taxed, private employees' pensions are taxed, everybody else in the State, their pensions are taxed. With regard to State employees, they are taxed so far as the Federal income tax is concerned. So now we are down to State income tax. With regard to State income tax, only part of the pension is exempt, that part which the State contributed. That part which the employee contributed has already been taxed.

We are talking now about \$10,000,000, we are talking in ten years of maybe \$100,000,000. We are talking about eight hundred thousand State employees and their families, and I think everybody knows that, because everybody was inundated with mail with regard to that number making it very clear that eight hundred thousand state employees and their families, presumably all voters,

would take it amiss if we would take a look at our Constitution and decided to treat it as a Constitution. We are talking about dollars. If there is any problem with regard to pensions of State employees then they should be raised. That is the way to handle the situation. The Legislature should raise the amount of pension. If pensions are inadequate, if wages are inadequate, wages should be raised, but not this kind of special privilege which cuts across our entire taxation procedure. Which holds up the Legislature from dealing with the problems of the State in any rational way. There is no reason for it, there is no excuse for it. And to go further into what we are now dealing with, if this Constitutional provision were not continued, the State employees would suffer nothing anyway, for two reasons. Number one, what we are now talking about in the Constitution is in our statute law, and I suggest that is where it should be. If reason, justice and equity say that there should be special taxation provisions with regard to State employees' pensions, then that should be in our statute law. There is no reason to have it in the Constitution, there is no reason that the Legislature shouldn't be permitted to deal with this.

We worry perhaps about the fact that something will be taken away from State employees, never retroactively. Whatever the State Legislature may do could never be retroactive because insofar as a pension right has accrued, it is a contract of the State. So that even if the Legislature in the face of eight hundred thousand and perhaps next year a million and perhaps the year after a million and a half, and, who knows, perhaps in fifteen or twenty years we will all be employees of the State. If the Legislature should in the face of all these people and their families, all voters, remove the special provision for Civil Service employees of the State, it would only act in a prospective manner, and I would suggest that since the question of Civil Service employees and the question of the amount of money they should have and the question of their rights is a question which should be left to the Legislature, it is a question that we should leave to the Legislature, and I do not believe, once again, that we should take the second step in the area of providing a special overcoat for special privileged groups.

MR. COOPER: Mr. President, do I understand that if this proposition is defeated in its present form, that the language of the present Constitution will be retained? Is that the effect of it?

THE PRESIDENT: That depends upon what happens to the rest of the Constitution.

MR. COOPER: This doesn't spell out a repeal of the old section, it simply says to insert a new proposition.

THE PRESIDENT: Yes.

MR. COOPER: Well, I am simply asking on the procedure now, if this proposition is defeated—

THE PRESIDENT: It will be defeated.

MR. COOPER: But do we still have the old section before us?

THE PRESIDENT: With the possible exception of what may happen to the balance of that proposition or article when the State Finance Committee acts. We don't know what they are going to do. I can't tell you now what the Committee is going to do. I wish I did.

The question now occurs on the advancement of the proposition. The Secretary will call the roll.

MR. DESMOND: Mr. President.

THE PRESIDENT: Judge Desmond.

MR. DESMOND: Pursuant to the rules, I wish to be marked as refraining from voting because I am directly interested in the question.

THE PRESIDENT: The roll call will so note.

MR. WAGNER: Mr. President.

THE PRESIDENT: Mayor Wagner.

MR. WAGNER: Mr. President, for the very same reason, being one of those old pensioners, I ask to be excused from voting.

THE PRESIDENT: The roll call will so note.

MR. BEAME: Mr. President.

THE PRESIDENT: Mr. Beame.

MR. BEAME: I would like to be excused from voting for the same reason.

THE PRESIDENT: The record will so note.

MR. KEOGH: Mr. President, subject to your having enough votes to pass the proposition, I ask to be excused.

THE PRESIDENT: The roll call will so note.

MR. SHAPIRO: Not for the same reason that Mayor Wagner asked, because he said he is an old pensioner, but as a young one, having an interest in the pension system, I ask to be excused from voting.

THE PRESIDENT: The roll call will so note.

The Secretary will call the roll.

MR. FROESSEL: Mr. President and fellow delegates, I too am a pensioner, but there is no conflict of interest here. Nobody can disturb the pension of those that have a pension now. It is a contract under the law. Therefore, I feel that I have a right to vote on this proposition, not in my own interest, but in the interest of the hundreds of thousands of Civil Service employees, and therefore, I shall vote.

MR. BEAME: Mr. President, I just want to say that if Judge Froessel has ruled that way, I am with him, I will vote, too.

MR. KEOGH: I ask to be excused from my request to be excused.

THE PRESIDENT: The Secretary will call the roll. Those who are opposed, raise their hand.

Judge Desmond, do you still want to be recorded as abstaining?

MR. DESMOND: Mr. President.

THE PRESIDENT: Judge Desmond.

MR. DESMOND: Mr. President, this amendment actually changes nothing at all. Wait a minute, just a minute. It merely clarifies and puts into the Constitution what is already in the decisions. However, by reason of the debate here which has ranged so far and wide, there is a possibility there would be talk that we were involved and so have a conflict of interest, so I am not going to vote.

THE PRESIDENT: Judge Desmond abstains from voting and Mayor Wagner abstains from voting. Those who are opposed, please keep their hand up so they can be recorded in the negative.

MR. CUSICK: Mr. President.

THE PRESIDENT: Mr. Cusick.

MR. CUSICK: I ask that my name be called.

THE PRESIDENT: Mr. Cusick.

MR. CUSICK: I think that the question Judge Desmond raises is a very pertinent one. I think it applies more particularly and with a great deal more conflict to those people who are members of the retirement system not yet on pension because we are voting here, if you are in that category, about a future pension which you may receive, and for that reason and because I feel that there is a definite conflict, being in that category, I ask to be excused from voting.

THE PRESIDENT: Mr. Cusick abstains from voting.

MR. SCILEPPI: Mr. President.

THE PRESIDENT: Judge Scileppi.

MR. SCILEPPI: As long as there is a difference of opinion as to whether there is a conflict of interest, as Chairman of the Committee on the Ethics of this Convention, I feel it is my duty and my responsibility to refrain from voting.

THE PRESIDENT: Judge Scileppi abstains from voting.

MR. CRAWFORD: For the reason stated by Mr. Cusick, I would like to abstain from voting also.

THE PRESIDENT: Mr. Crawford abstains from voting.  
Judge Goldman.

MR. GOLDMAN: For the very same reason, I ask to be excused from voting.

THE PRESIDENT: Judge Goldman abstains from voting.  
Mr. Henderson.

MR. HENDERSON: I also would like to abstain from voting.

THE PRESIDENT: Mr. Henderson abstains from voting.  
Mr. Earl.

MR. EARL: For the same reasons, I abstain from voting on this issue.

THE PRESIDENT: Mr. Earl abstains from voting.  
Mr. Patterson.

MR. PATTERSON: Mr. President, since I am a member of the Ethics Committee, I ask to be excused from voting, and also a present pensioner.

THE PRESIDENT: Mr. Patterson abstains from voting.  
Mr. Stakel.

MR. STAKEL: Mr. President, I ask to be excused from voting. I am a pensioner at the moment.

THE PRESIDENT: Mr. Stakel abstains from voting.  
Mr. Pomeroy.

MR. POMEROY: Mr. President, I would like to ask the Ethics Committee to rule on whether those who are members of the Retirement System may vote on this.

THE PRESIDENT: If you want my opinion, they can.

MRS. GORDON: Mr. President.

THE PRESIDENT: Mrs. Gordon.

MRS. GORDON: For the reason that I am in the Retirement System, I ask to be excused from voting.

THE PRESIDENT: Mrs. Gordon abstains from voting.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Mr. Greenberg.

MR. GREENBERG: It seems to me, Mr. President, with all due respects to the learned gentlemen, pensioners, judges and otherwise, that we have just witnessed something of which I am sure others besides myself will be at least just a little bit ashamed. Now, it is all right to talk about conflict of interest when there is really a conflict of interest, and if any of you had served in the Legislature, as some of us have, perhaps you would have a better understanding of what we mean as a matter of law when we talk about conflict of interest. But to stand here and say because you are a member of the system and someday—and who knows whether you will retire from service while you are alive or whether the good Lord, and I hope not, in His wisdom decides otherwise, and you are saying now because you are a member of this system and you are voting to continue something which exists now in the fundamental law of our State, that there is a conflict of interest? Gentlemen, gentlemen, to some degree there is hardly a thing that we will be called upon to vote for or against that the same charge of conflict of interest cannot be leveled, at least in the same degree as I think it is proper in this instance.

Mr. President, if it is the wish of the leadership that I put this matter over, I have no objections. So far as I am concerned, I am prepared to cast my vote in the affirmative, and I am probably at that age where I am about to retire much more quickly than some of these younger men.

THE PRESIDENT: We will continue with the roll call.

MR. BRYDGES: Mr. President.

THE PRESIDENT: Senator Brydges.

MR. BRYDGES: Mr. President, I am going to vote for this proposal. Now, if all of us take the same position that a few of the other delegates have taken, I doubt if there are ninety-four people in this room who can pass the proposition, because I think more than a sufficient number belong to the system, to prevent its passage if all of us take the same position. Now, I think Judge Scileppi ought to give us a ruling—his Committee on Ethics should.

MR. SCILEPPI: Mr. President.

THE PRESIDENT: Judge Scileppi.

MR. SCILEPPI: Mr. President, Delegates to this Convention: I indicated that there was some serious question in my mind, at least in the minds of some in addition to myself, as to whether there is a conflict. I haven't actually thought the thing out. I am only one member of a committee of four, and I don't propose to speak for them at this time without calling a meeting of my committee if it becomes necessary to do so.

I can understand the arguments and I appreciate the arguments of Senator Greenberg here. Frankly, I am inclined to feel as a personal matter as he says, that if we vote on taxes, if we vote on other issues that come before this body there is some interest that all of us may have in the outcome of the proposition. I don't think that this is the kind of interest that is considered a conflict of interest which would prevent anyone from voting on the proposition.

I merely stated that there was some question about it. My personal view is as the Chairman, as an individual, that this does not rise to the level of that kind of conflict of interest which should prevent or have a delegate refrain from voting on the proposition.

However, because I am the Chairman of that Committee, I am being cautious

about the duties as Chairman of that Committee. I simply stated that I would refrain from voting. If I have to reconsider that, having heard arguments pro and con, I would say let's vote for it now.

THE PRESIDENT: Mr. Moore.

MR. MOORE: I have been a pensioner of the State of New York for 14 years. I have listened to the debate very carefully. I can see no conflict of interest upon my part and I intend to vote.

MR. LEVY: Can I just add this statement here. I don't know how we got sidetracked or how the delegates got up to say they are not going to vote, but I think there is something deeper here. If you are going to let something like this say we have a conflict of interest, what assemblyman or senator is going to be able to vote in the Legislature; what judge is going to be able to vote on the judiciary. I think we are voting the way we feel in good conscience and I don't think we should now start to say we are going to abstain from voting like this.

THE PRESIDENT: May we continue with the roll call, please.  
On the roll call, Mr. Cusick.

MR. CUSICK: Mr. President, in the appendix on the Code of Ethics, "No officer" and so forth—"should use his official position to secure exemptions for himself."

I submit, Mr. President in voting on this proposition I would be voting for a tax exemption for myself upon my retirement, and, therefore, I ask to be excused from voting.

THE PRESIDENT: It has already been indicated in the record, Mr. Cusick. Mr. Shoemaker.

MR. SHOEMAKER: Mr. President, Rule 7, Section 3 says that any delegate requesting to be excused from voting may, when his name is called, make a brief statement of the reason for making such request, not exceeding two minutes in time, and the Convention, without debate, shall decide if it will grant such request." I take it to mean a person must have unanimous consent to be excused from voting. I will not consent to anybody not voting.

THE PRESIDENT: Without objection you may state your vote.

MR. SHOEMAKER: I vote no.

THE PRESIDENT: Mr. Shoemaker in the negative.

MR. MATTHEWS: A roll call may be interrupted for a motion to recess or a motion to adjourn. In the hope that the Ethics Committee could meet in the interim between now and tomorrow at our session, I at this time move we stand adjourned until tomorrow at two o'clock.

THE PRESIDENT: I am sorry, but we are in the middle of a roll call and the roll call takes precedence.

MR. MATTHEWS: Point of order. I believe that is not so. A roll call may be interrupted for a motion to recess or adjourn.

THE PRESIDENT: Do you want to take a vote on your motion to adjourn? If you want to waste time we will take a vote on your motion. I am trying to expedite the work.

The Secretary will announce the results.

THE SECRETARY: Ayes 155, noes 10, abstentions 10.

MR. FASTENBERG: Will you record my vote as not voting.

MR. STAKEL: I abstain.

MR. CRAWFORD: May we hear the abstentions read?

THE PRESIDENT: Yes, will you read the abstentions please?

THE SECRETARY: Crawford, Cusick, Desmond, Earl, Fastenberg, Goldman, Mrs. Gordon, Henderson, Patterson, Scileppi, Stakel, Wagner.

MR. SHAPIRO: Shapiro.

MR. TULLY: And Tully.

THE SECRETARY: Shapiro and Tully also abstaining.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

The next matter on the calendar, bottom of page 2 by Judge Walsh.

MR. WALSH: Mr. President, in view of the hour I ask permission to put this over until tomorrow.

THE PRESIDENT: Tomorrow's calendar.  
Senator Greenberg on page 3, your three propositions.

MR. GREENBERG: In view of the hour I believe they should go over until tomorrow.

THE PRESIDENT: All three propositions on page 3 tomorrow's calendar.  
Committee notices.

THE SECRETARY: Committee on Economic Development will meet tomorrow in the Assembly Parlor at 8:30 A.M.

Committee on Natural Resources and Agriculture will meet tomorrow in Room 408 at 9:30.

There will be a requiem Mass celebrated by Father Donald Curran for Jay Birdsall at the Cathedral Chapel on Park Street at 8:00 A.M. tomorrow.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I now move the House stand adjourned until tomorrow at 2:00 P.M.

THE PRESIDENT: So ordered.

(Whereupon at 6:17 P.M. a recess was taken to July 25th, 1967 at 2:00 o'clock P.M.)

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## TUESDAY, JULY 25, 1967

THE PRESIDENT: The Convention will come to order. Will the delegates please take their seats.

THE REVEREND LAMAN BRUNER: O God, the Fountain of Wisdom, Whose statutes are good and gracious and Whose law is truth; and we beseech Thee so to guide and bless the Constitutional Convention of this State, that it may ordain for our governance only such things as please Thee, to the glory of Thy name and the welfare of the people; we also beseech Thee, with Thy gracious favor to behold our universities, colleges, and schools, in this land and Canada that knowledge may be increased among us, and all good learning flourish and abound. Bless all who teach and all who learn; and grant that in

humility of heart they may ever look unto Thee, Who art the Fountain of all wisdom; through our Lord. Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: May the record show that Judge Ughetta is ill and unable to be present today?

THE PRESIDENT: The record will so note.  
The Secretary will read the Journal of yesterday's proceedings.

THE SECRETARY: (reading) In the Convention on Monday, July 24, 1967—

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: I move we dispense with the further reading of the Journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered.

May I at this time also state that the directive issued yesterday with regard to the people standing around the Chamber who are not delegates applies today and will apply every day until the end of the Convention. I would ask the Sergeant-at-Arms to see to it that those who are visitors find a place behind the glass partition, except those who are given special privilege of the floor of the Chamber.

The Chair recognizes Mr. St. Lawrence.

MR. ST. LAWRENCE: Mr. President and distinguished fellow delegates, it gives me great pleasure to introduce to this august body a most renowned Prelate and two distinguished educators. The Right Reverend Benjamin C. Eckardt, Bishop of the Church of Christ for the Province of Ontario, who has already earlier this month delivered a most sage invocation before this body, is a man whom I am privileged to know personally.

He has been a leader in the field of education in Canada, our great northern neighbor, as President of Philathea College; he has guided the fortunes of that institution from its days as an excellent but little known Bible school to its position today, which is one of growing international eminence with a faculty of truly outstanding persons, and an alumni, all of whom have achieved great distinction wherever they have settled.

With his Grace this morning is the esteemed Chancellor of the College, Dr. L. Lester Beacher, a man known throughout the world as a pioneer in the science of optometry, the author of the first major scientific work on contact lenses; a book which so many years since its publication is still today considered a primary source of knowledge.

Also with Bishop Eckardt today is Dr. Herman A. Bayern, Professor of Economics at the College and one of the most distinguished elder statesmen of our great Democratic Party in this country. Dr. Bayern, whom I am proud to claim as a friend, is the nearly legendary man who provided the late President Franklin D. Roosevelt with the orthopedic devices which made it possible for him to run successfully for Governor of this great State, an event which I am sure all of us recognize as a momentous one in the history of American politics.

Mr. President, distinguished fellow delegates, it is my great pleasure to present these three outstanding humanitarians to you, and to ask that the welcome of the Chair and of this Convention be extended to them.

Thank you.

THE PRESIDENT: The Chair is very pleased to welcome again our good friend, dear friend, Bishop Eckardt, and the gentlemen who were introduced by Mr. St. Lawrence. I understand that Dr. Lindenhauer and Dr. Zurich are with them also. I am very pleased to welcome them all and I trust they will enjoy the deliberations of this Convention.

And if I may at this moment, ask the indulgence of the delegates, I would like to do something which is not exactly protocol but something that will make me extremely happy and I am sure make the delegates extremely happy, because I am informed that His Excellency, the Bishop, is going to make a presentation to our very dear friend, the Chaplain of this Convention, Dr. Bruner, and I would like to just step back for a moment to give the Bishop an opportunity to make such a presentation.

(Applause)

BISHOP ECKARDT: Thank you very much. Mr. President, Doctor Bruner, if there may be other reverend gentlemen here, I hope so, you will find them everywhere, and distinguished legislators and distinguished gentlemen:

I am very happy to be here. I will try to be brief. You take a grave risk when you ask a clergyman, especially a bishop, to say anything.

I am very nervous about this. I used to be able to control myself because I had a little gimmick. I used to put a lozenge under my tongue, an English lozenge, I put it under my tongue and by the time it had melted I had spoken eighteen minutes. But at one time, there was a little slip. I spoke for an hour and a half before I realized that what I had under my tongue was a button off the fly of my pants. (Laughter) So I will never try that again.

I am going to ask the good Doctor Bruner to remain seated for the time being, and I want to explain why he was chosen. Of course, he was chosen for his excellence of character, his dedication and his great service, not only to the churchmen, but here as your chaplain. He was recommended by those that were close to him, and if you want to get a real recommendation of anyone, you just don't go and ask someone on the street—if you want to know about me, you would ask my wife, she knows—and from his close associates, not from his dear wife, I have heard the very best of things.

He is recommended, too, because in the world today, a world that is so full of science and everything else, it certainly divides the men from the boys, and with all the things we have in the world today, I always admired what Churchill said: "That the stone age, if we are not careful, may return to us on the shining wings of science."

So we need the voice of the Church, we need that discipline of God that we will hold these things down in their place.

I am very happy to have chosen this man after he was recommended to me because he was recommended for his excellence—but for something else, he was recommended because he is not a narrow-minded man, although he is a dedicated man, and he isn't filled with any ego. I take this from his younger days when someone told me that one time he came out of his parsonage, and it was the days of rationing, and a man was swearing very badly. Doctor Bruner rebuked him severely. The man said "Look here. You have to line up to get your rationing, now I am late, my wife is going to give me a real scolding when I get home and now my car won't start. What would you do?" And he said "I wouldn't swear. I would sit down and pray about it." The man said "Well, I will try it, Parson." He sat down on the running board of his old jalopy and he prayed and stepped on the starter and away went his car and a neighbor said he heard Doctor Bruner say "Well, I'll be double damned." So although he gives advice, he is not narrow-minded in any way.

Also he is a man that mixes and spreads like Jesus Christ, our Lord did his great teachings and humanitarian views, just as he mingles also with all the people.

One time when I was younger, I used to be a bit narrow, and I take it this good man, that he is not narrow at all, he has been cured. I was cured in a rather peculiar way. I used to be against drinking something terrible. Now, I am going to a cocktail party at 5:00 o'clock. But I remember the last sermon I preached on prohibition—God forbid the awful name—and I really preached a scorching sermon, and I ended up my sermon by saying if I had my way, I would pour all the liquor in the river, and the congregation got up and started singing "Shall we gather at the river", and I have been down there ever since.

I want in closing now, aside from some of my feelings I have exchanged with you, that here is a man that walks among people and in a dignified way breaks with them the bread of life, counsels them when they are in trouble, doesn't appear to be snobbish or shocked, has a feeling for his fellow men and lifts them up and helps them, as our good Lord did. He is not like the gardener that had the recommendations that he could trim hedges, plant hedges, arrange flowers beautifully, and after the man read the recommendations he was about to hire him, he turned the slip over and it said "He could do all these things but he won't." You do, and you will. You really apply your arts of theology and love for your fellow man.

At this time, although we had decided to confer upon you the Doctor of Laws, and then the Police College, recognized by the Government of Washington, begged me that they wanted to confer upon you because they were a law body the degree of Doctor of Laws, I then changed it to Doctor of Humanities, which is the same as Doctor of Humane Letters, and at this time I am going to ask Dr. Lindenhauer, who has brought from New York signed by the Chancellor, Dr. Jacob List, a great psychologist, he was ill with the flu and he was able to sign it and send it with Dr. Lindenhauer and to bring a certificate at this time, and then the Vice Chancellor, Dr. Beacher, who has accompanied Dr. Lindenhauer to bring me the hood at this time.

You just remain seated, Dr. Bruner.

"Be it known that the Board of Trustees, that the nomination of the approval of the Faculty hereby confer upon Dr. Bruner, who has satisfactorily met the requirements of this distinction, Doctor of Humanities, together with all the rights, privileges and honors that pertain thereto, is witnessed therefore in the office of the school, have herein set their hands and caused the Seal of the College to be affixed at London, Ontario this day, July 15, 1967."

This was conferred in London, Ontario and you were unable to be there. It was conferred in absentia, but we have one rule and this rule carries even to our students that graduate. If they graduate and they are not able to come to Convocation, they come back and get their certificate or they never get it. We never mail anything out. So inasmuch as this was granted, rather than mail it we have brought it to you, and if at this time they will bring up the hood, I will confer the degree upon you by the authority vested in me as the President by the charter we received from the Government of Ontario under the Minister of Education, at this time Doctor of Humanities, of Humane Letters. (Standing ovation)

THE PRESIDENT: This I am sure has been a great pleasure, not only to me as President of this Convention, but also to me as Speaker of the Assembly, because my very dear friend, Reverend Bruner, is not only the Chaplain of this Convention, but has been Chaplain of the Assembly. And I am very pleased that this distinguished honor came to you today. I know it is a most deserving one and I am very happy for you and I congratulate you most humbly and sincerely.

Won't you say a word?

Mr. Bruner: Mr. President, ladies and gentlemen, members of the Convention, it is a very great honor that has been awarded, not because of myself personally, but because I am sure, as the Bishop of the distinguished college has

mentioned, we seek in one way to express the spirit that has made this great continent great and which is necessary, and I am deeply honored to be part of this tradition.

I particularly thank the President of the Convention, Bishop Eckhardt, the Trustees of the College, the Honorable Mr. St. Lawrence and others who made this award possible.

I particularly thank you, Mr. President.

(Applause)

THE PRESIDENT: The Chair recognizes Mr. Weinstein.

MR. WEINSTEIN: Mr. President, as Majority leader of the Convention and also as Majority leader of the State Assembly, I am very proud to have participated in what I think is a great event in the life of both of these organizations.

Many of you don't know Dr. Bruner as we who serve in the Assembly do, but I can tell you he has been a great reward to our service in the Legislature. On many occasions when we find ourselves terribly perplexed his sermonettes or his invocations have been a great source of inspiration and encouragement.

Many of us have framed and placed on the walls of our respective offices these little sermonettes as a means to encourage us to continue the fight for the many things we hope to achieve in this century.

I am very delighted, Dr. Bruner, to join with all your countless friends and I have the right to speak for the majority members of the Assembly in saying to you that the college should be congratulated upon having chosen so well to give such an important degree to a very human being, and I am very happy to extend my personal congratulations.

(Applause)

While I am on the floor, I should like to have the privilege, Mr. President, of asking you to extend the privileges of the floor and a word of greeting to three very distinguished ladies who have joined us here today. You will forgive me if I don't take them in any particular order, but first the very lovely and wonderful mother of our distinguished colleague, who received his degree today, Mrs. Bruner, and his very lovely and charming lady, Mrs. Bruner, and the wife of our very distinguished visitor, Mrs. Eckardt.

(Applause)

THE PRESIDENT: The Chair extends a very cordial welcome to Mrs. Bruner, Doctor Bruner's mother, and his lovely wife, and of course the lovely lady of His Excellency, the Bishop, Mrs. Eckardt. We are privileged by your being with us.

The Chair recognizes Senator Brydges.

MR. BRYDGES: Mr. President, distinguished guests, Doctor Bruner, I, too, would like to join in the plaudits made to our distinguished Chaplain. I, unfortunately, don't have the opportunity of knowing Doctor Bruner as well as the Assemblymen do, although he does come to visit the Senate Chamber from time to time. But the Lord never did his work among the virtuous, as Doctor Bruner knows, when the Lord's work really has to be done.

What I like is Doctor Bruner's total involvement, not only with people, but with politics, his willingness to rub elbows, to quote a phrase, rub shoulders with those of us who live in this goldfish bowl of politics. I am reminded of the God of ancient Israel, when he wished to invoke the greatest punishment on which an omniscient God can conceive upon an errant people, he said, "Make the hearts of their people fat and their ears heavy and blind their eyes lest they see with their eyes, hear with their ears and understand with their hearts and be saved."

The Lord knew that the greatest punishment was a feeling of satisfaction and

complacency and I think, Doctor Bruner, you have demonstrated your desire to become involved with people on a day-to-day basis and on a sectarian basis and I give you credit for it. I want to say that at times Doctor Bruner really remembers his true role and instead of praying for us, prays for the people we represent.

(Applause)

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, in keeping with the trend of modern times, I think that the Assembly is entitled to equal time, and I want to point out to my very distinguished Republican colleague in the Senate that we have a saying on this side that the elephant has a thick skin, a head full of ivory, and, as everyone who has seen a circus parade knows, proceeds thus by grasping the tail of its predecessor.

MR. MANGANO: Mr. President.

THE PRESIDENT: Mr. Mangano.

MR. MANGANO: Mr. President, at this time I would like to present the wife of a very distinguished member of this Convention. I would like to present the wife of Gasper Fasullo, Mrs. Fasullo. Would she please stand and take a bow?

(Applause)

MR. MANGANO: I am also very happy to announce not a birthday, but I am very happy to announce that we have the presence here of a very, very distinguished Brooklynite, a member of the New York City Council and Chairman of the Public Welfare Commission and also a Democratic State Committeeman in the person of Dominick Corso.

(Applause)

THE PRESIDENT: The Chair is very pleased to welcome Mrs. Fasullo to the deliberations of this Convention, and of course I am very pleased to welcome my very dear friend, Dick Corso. While no relation to our former colleague, Joe Corso, he is the successor to Joe Corso in the leadership in that district since Joe ascended the Bench. So I am very happy to have you here, Dick Corso, and I trust that you will enjoy the deliberations of this body.

MR. HENDERSON: Mr. President.

THE PRESIDENT: Mr. Henderson.

MR. HENDERSON: While we are on this order of business, I would like to say that as the elder of the delegates from the Forty-eighth District, that it is my pleasure to announce to you fellow delegates today that our youngest member is celebrating a birthday anniversary, and so we have a little gift for Garth Shoemaker which simply says, "Smile, things couldn't possibly get worse."

(Applause)

THE PRESIDENT: Are you going to give him a cake?

MR. HENDERSON: So he won't feel so completely out and away from home, we have a very fine cake for you, Garth.

THE PRESIDENT: The Chair is, of course, very pleased to join with my very dear colleague and friend, Charlie Henderson, in extending the felicitations of the Chair and everybody here on your birthday today, Mr. Shoemaker, and I trust that you will have many, many years of a fruitful life and a healthful life.

Now, if I may proceed with the business of the day, and I want to say that yesterday in the rush of our closing, I had extended, of course, the right to make remarks upon unanimous consent and after having done that to one of our very distinguished colleagues, I proceeded to close the Convention without granting him that opportunity. I would like to apologize to him and if I may, with the indulgence of the members, call him now and ask all the others who want to make a consent statement to make them at the end.

The Chair recognizes Mayor Corning.

MR. CORNING: Mr. President, I ask unanimous consent to make a statement.

THE PRESIDENT: Without objection, Mayor Corning.

MR. CORNING: Mr. President and fellow delegates:

There have been many statements made in this Convention that we are going to complete our work on or before September 26th. The reason for that particular date is, of course, that the Constitution requires at least six weeks' time between the completion of the Convention's work and its submission to the people. The Constitutional Convention has the power to set the date on which the Constitution will be voted on, the only limitation being that it cannot be less than six weeks after the end of the Convention. I do not think that six weeks is a long enough time. On the other hand, I do not think that it is humanly possible for this Convention to complete its work any substantial number of weeks ahead of September 26th.

Accordingly, I recommend to this Convention that we submit the new proposed Constitution to the people at a Constitutional Election, a Special Election to be held a minimum of ten weeks after the completion of our work. I further recommend that this election be held on at least two days, possibly three, and that at least one day be on a week-end. I further recommend that this election be a State charge.

There are a number of reasons that have caused me to make this recommendation. In the first place, you and I know very well that on election day up to two-thirds of the people who go into the polling place to vote, just do not vote on Constitutional Amendments. The vast majority are concerned primarily with the candidates, their qualifications, their record, their party affiliation. To couple such an important document as the proposed new Constitution for the State of New York with the election of candidates for public office is grossly unfair both to the Constitution and to the candidates. If the work of this Constitutional Convention is voted on at a special election, everyone will be interested in the Constitution and only the Constitution.

Historically, many most worthwhile Constitutional propositions have been defeated because they were bracketed with a proposition that was highly unpopular with an active and vigorous minority. I do not think anyone would want to put "Blaine" and "Forever Wild" in one bracket.

To carry this further, individual propositions could very well be approved if voted on individually. On the other hand, if these same propositions were voted on as a unit, they could be soundly defeated. I think it is axiomatic that the fate of the Constitutional propositions or Constitutional amendments is decided primarily by the numbers of those who want to vote against them.

It may be argued that a two or three-day election would cost more. That is true, but where we are spending a tremendous amount of money, many millions, on this Convention, it means that the people of the State believe it to be important. I think it is just as important to spend a modest amount more and give everyone a full opportunity to express his wishes at the polls on a matter as important as a new Constitution for the State of New York.

I would like to point out one further matter, and that is that this is the first year of state-wide permanent personal registration. The task of getting this

to work right the first year is a truly monumental one, and is a further argument for not having the Constitution voted on at this coming general election.

A special election is, of course, more flexible. If the much discussed date of completion of September 26th just cannot be met, there is no great loss and no reason to finish up the Convention's work in an atmosphere reminiscent of the last days of Legislative Sessions.

This Convention should not be forced to deliberate on a fixed time schedule which may prove to be too tightly drawn. This Convention should not bind itself up in the shackles of a September 26th deadline.

Further on the question of time, while it is doubtful that six weeks is long enough time for proper study of the Convention's work, it is certainly not long enough for our men and women in the Armed Services.

I wish to make this one further observation: The work of this Convention is very different from the work of the Legislature. When the Legislature passes a bill and it is signed by the Governor, it becomes Law. As far as we are concerned, everything that we do in this convention is preliminary to the action by the people of the State. We are preparing the Constitution to be submitted to the people, and a great part of our responsibility is to be able to interpret the wishes of the people, both as to the content of the proposed Constitution and how it is to be voted on. I ask that you give serious thought to the importance of submitting this proposed Constitution in such a fashion that it can have the very best chance of being properly presented, intelligently studied, and carefully judged. This I believe can only be done if the voters have time to study it, and consider it by itself, and the opportunity of voting on it at a Constitutional election.

Thank you, Mr. President.

(Applause)

THE PRESIDENT: Calendar of the day. Propositions on the order of third reading.

MR. BRYDGES: Mr. President.

THE PRESIDENT: Mr. Brydges.

MR. BRYDGES: Mr. President, may I have unanimous consent to make a very brief statement in response to my good friend, Mayor Corning?

THE PRESIDENT: Without objection, Senator Brydges.

MR. BRYDGES: Mr. President, I couldn't disagree more heartily with any proposal than I do with this one advanced by Mayor Corning.

In my judgment it should be our total objective to finish this work at the time specified in the rules and in time to have the proposition or propositions submitted to the electorate in November of 1967, which happens to be a reasonably clean ballot from the standpoint of other issues involved. We may have an election for Court of Appeals judges; that may resolve by agreement, I don't know, Mr. President. Perhaps you are privy to the inner councils more than I am.

THE PRESIDENT: Not yet.

MR. BRYDGES: But in any event the history of special elections in this State, the history of very few people voting, of very few people participating, we, in effect, create a special class of electorate who pass only on subjects of this kind without involvement of the total voting public. The time to try a lawsuit after you have got the facts in mind. Now, this Convention has done a tremendous amount of work. I think we know now more intimately all of the provisions of this Constitution and what we should do about them than we will ever know and, believe me, to let this group now believe that there is any

prospect of not meeting these deadlines is a tremendous mistake, and to the extent that my distinguished friend, the Mayor and delegate commented on the last days of the Legislature, let me say this—and I speak only for the Senate. We closed in a 24-hour session. We stayed up all night, but there wasn't a single issue great or small that wasn't fully and totally debated by an alert membership of that body. That isn't disorder, that is an effort and an honest effort to do your business and get it finished when it ought to be done and that should be the objective of this Convention.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, may I have unanimous consent to make a brief statement?

THE PRESIDENT: Without objection, Mr. Weinstein.

MR. WEINSTEIN: Mr. President and Ladies and Gentlemen of this Convention.

THE PRESIDENT: I am affording this courtesy to the leadership.

MR. WEINSTEIN: When this body was elected to become delegates to what we consider to be the most important event, at this time a State Convention to determine what we can do with the Constitution which would serve our people, many of us who were elected told our people that it was our effort to finish the job on time so the people can have an opportunity to express their will on election day. I am of the firm opinion that we can and we will and we shall finish our efforts in that time by the September 26 deadline because we have already planted the seeds of many efforts to find that which is best in the respective committees. Our 14 chairmen have been very industrious and working hard and even though perhaps our sessions have lasted two or three days, I happen to know personally our chairmen have been working six and seven days a week in an effort to present to this Convention complete articles so that you and I can have a chance to determine what is best. Only yesterday we finished one of the most important articles. I daresay that the judiciary, the Legislature, the State Finance, nothing, in my humble opinion, is as important as the Bill of Rights which you presented yesterday in an article to the people because the Bill of Rights fundamentally is the birthplace where all of these fine ideas and objectives that we have, such as judiciary and finance, can really grow and prosper and become part and parcel of government and people. We have an obligation. Our obligation is to finish, our obligation is to present to the people a document, our obligation is to help pass that document after we have completed it because every man and woman in this House has made a contractual obligation to take that which we finally gather together as the consensus of opinion, give it to the people and go out and in every town, every village, every community and every county of this great State, to work hard for its passage so that the people will have an opportunity to feel that we have not labored in vain. I wouldn't like to go back to my constituency, having represented them in this Convention, believing that I had misled the people of my area. I told them that we would complete our work on time. I know we can complete our work on time, and I say to my very distinguished colleague on this side, Mayor Corning, that the members who run for election will not suffer because we have a Constitution on the ballot. We have had some very fine men running at the same time as Presidents of the United States and as Governors of the State of New York and I want you to know that I believe with every fiber at my command the electorate sometimes makes mistakes, but they have a wonderful way of correcting them, and I have great faith in the electorate and the people of our great State. We are enhancing the privileges of voting, we should have enough faith in the people to whom we have given the vote to know that they know the difference between right and wrong, and I urge upon the members and the chairmen and the delegates who

serve on the subcommittees to lend every effort to make sure that when September 26, or earlier has arrived, we, the members of this Convention, have presented to the people a document of which we shall be proud and a document which will be a historic page in the history of our State and serve as an example for many other states in the nation to follow.

THE PRESIDENT: Calendar of the day. Propositions on the order of second reading. Page 2. The Secretary will read.

THE SECRETARY: (reading) Proposition No. 139-B, by Mr. Walsh.

MR. WALSH: Ready.

THE PRESIDENT: Ready. Lay it aside.

THE SECRETARY: (reading) Proposition No. 1345, Rules—

THE PRESIDENT: Ready. Lay it aside.

THE SECRETARY: (reading) Proposition No. 1346, by Rules.

THE PRESIDENT: Ready. Lay it aside.

THE SECRETARY: (reading) Proposition No. 1347, by Rules.

THE PRESIDENT: Ready. Lay it aside. Lay it aside. Lay-aside calendar. The Secretary will read.

THE SECRETARY: (reading) Proposition No. 139-B, by Mr. Walsh. A proposition to amend the proposed Constitution, in relation to the qualifications for holding public office.

MR. WALSH: Mr. President.

THE PRESIDENT: Judge Walsh.

MR. WALSH: The proposition that is on the calendar on the order of second reading, Mr. President, seeks to incorporate in the new Constitution a prohibition against any property qualification as a condition of holding a public office or trust, in the State. Several of the delegates, Mr. President, have expressed to me their desire to debate this proposition. I shall not discuss its merits but leave it to them during the course of debate.

However, I feel that a brief historical account may serve to be of some assistance to the delegates in debating this proposition.

In colonial times the participation of men in the conduct of government was made to depend upon his ownership of property. This was equally true with reference to the holding of public office for which property qualifications were common.

During the reign of William and Mary in 1690, Henry Sloughter was commissioned by them to be the Governor of the Province of New York. In his instructions he was commanded by them to provide in the colony of New York that Councilors and other principal colonial officers should be "men of estate and ability and not necessitous people or much in debt. And that they be persons well affected to our government."

Now, this instruction essentially imposed a property qualification for holding the principal offices in the colony, and this continued during the entire colonial period and was included in the first New York State Constitution.

The New York Constitution of 1777 provided for a Senate composed of freeholders only.

The second Constitution of 1821 continued from the first Constitution the provision requiring the Governor and legislators to be freeholders. It was believed that this requirement added dignity to those offices and insured the selection of persons who had a direct property interest in this State.

As early as 1826, property qualification for voting privileges was abolished in this State and the Legislature in 1844 and again in 1845 proposed an amendment that "no property qualifications shall be required to render a person eligible to or capable of holding any office or public trust in this State."

In submitting this amendment to the people in 1845, Governor Wright said: "The qualification is doubtless in conflict with the present policy of our laws and feeling of our people, as the day has passed by when the title to a freehold is supposed to be a necessary qualification either to entitle a citizen to vote or to be voted for."

The people of this State approved this amendment by an overwhelming vote of 114,900 to 3,901. While this policy was continued thereafter as a matter of policy in this State, this prohibition was not directly expressed in the third or any subsequent Constitution. A property qualification is still imposed by statute in the case of many public officers, especially municipal officers, and town officers.

And with that, Mr. President, I will open the debate.

MR. ST. LAWRENCE: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. St. Lawrence.

MR. ST. LAWRENCE: Mr. President, on the proposition.

THE PRESIDENT: On the proposition, Mr. St. Lawrence.

MR. ST. LAWRENCE: Fellow delegates, I am very happy to have the opportunity to stand here within the allotted time. I am sure it will be brief, to reiterate to you some of the statements that were made on this floor earlier in the Convention about the ownership of property as a prerequisite to holding public office in the villages and the towns of the State of New York.

I think the question here is a basic question of the rights of individuals in the structure of government. While I did wish to go into the history of the laws we now have, at the very inception, they were gone into by Judge Walsh. But I would like to give you a brief history of the legislative action that has taken place in the last three years in the Legislature of the State of New York where a number of legislators tried to have this unfair law removed from the statutes relating to villages and the towns. I am sure that you recall that I mentioned that Senator Greenberg, working in the Senate with Senator Dominick, and myself in the Assembly, were able, two years ago, to have a bill transmitted to the Governor of the State of New York and he vetoed that measure. This past year we had a combined bill that took both the villages and the towns together; it passed the Assembly with sixteen dissenting votes and failed to pass the Senate by some three votes.

I say to you now, and I submit that this is a very vital issue to be taken up by the Convention. It is an area where we can do a great service, it is an area where the legislature and the Governor have failed to provide those rights, and I feel that we need major surgery here to have it by constitutional mandate.

As we all know, the right of the individual is the basic premise in the Federal Constitution and in the Constitution of the State of New York. The dignity of citizens, the right of all citizens to participate to the fullest extent in the affairs of their government, because we all believe in the basic premise of government of the people, by the people and for the people; and with this restriction we now have in statute law in the State of New York, we do not have government by all the citizens of the State. We need to have a fuller representation.

If we look back to see where the inception of this idea arose, we will see that this was based on a principle that the landed gentry of this country were the only ones capable of ruling. That the wisdom of the aristocracy was supreme and that the intelligentsia of our communities were the only ones who were able to govern. It is a brainchild of fear because if you look back in the sociological development of this country, look back to the days when we had the landed

gentry with their large estates and their farms, you will know that to supply, to care for a family of five or six, that you probably had 30 or 40 servants working on the farms; and, therefore, out of a fear of losing control, of losing control to those people who were no better than squatters, who were tenant farmers, who were working for a mere existence, they were not given the rights of full citizenship. That fear still exists today, where the rights of full citizenship are not given because of a fear in some of our communities today of a loss of control to tenants or non-property owners.

I think you will all agree with me that the sociological climate today is such that those people who rent property, who live in apartments are not people who are not contributing to the society financially. The squatters and the tenant farmers paid no income tax; they paid little or no taxes to the state. But today the tenant, the apartment dweller is a substantial taxpayer with his income tax, his user tax, his corporate taxes and many other taxes, and he now contributes to his State.

I would like to say that the area of fiscal responsibility and the rights of the individual is one thing, but I would like to briefly point out to you where we are losing the valuable assistance and denying full rights of participation in government to two segments of our society.

And last week we discussed the 21-year-old voting age. I would like to discuss with you that many of our young people today who are married and cannot afford to buy a home—the young people who have just reached the majority, who can vote, the 22, the 23, the 24 and 25-year olds who do not have the wherewithal financially to buy a home, the very people that we are trying to get into politics, to get into the civic affairs of their community—are deprived of this right because of this archaic law now on our books.

I would like also to take the antithesis of this. Let us take the sociological developments in our society today where we have people retiring at the age of 55, people who have lived in their community, people who built the schools, people who built the fire departments, the highways and the special district programs—these people are now retiring, their children are educated and because they can no longer afford the high taxes in their retirement, they sell their homes, and more and more particularly in the suburban areas of this State, which now numbers some 35% of our State population. The vast reservoir of knowledge that is imbedded in the minds and the experiences of these people are not available to be utilized and to implement programs in the community, and I would say that here we have a discriminatory practice against the senior citizens of our community and also against the rights of the individual and against the younger people in our community whom we are trying to get into responsible interaction in government.

I would say to you that this is an archaic law, it is a bad law, it is a law that we must take action on here today, and I hope affirmatively, and I wholeheartedly submit this proposition for your affirmative vote. Thank you very much.

MR. BELL: Mr. President.

THE PRESIDENT: Mr. Bell.

MR. BELL: Mr. President, I rise today to support the proposition of Judge Walsh. This issue came to my attention by reason of a local situation where we had a very competent and qualified man with a doctorate in engineering who is civic-minded and participated in many civic drives, and we finally induced him to run for local office, only to find out he was not qualified because he rented a \$35,000 place rather than owning a 2-inch piece of land.

The situation was such that I introduced the first proposition on this, No. 43, which was referred to the Committee on Bill of Rights and Suffrage, along with the other propositions having to do with qualifications with respect to ownership of property as a qualification for holding public office, one of which was

introduced by Judge Sobel and one by Mr. Duryea, both of which have to do with sex.

The point that I would like to bring up before going on to the merits is one of where this proposition belongs which I introduced and that I thought belonged in Article XIII, the Public Officers Law. Therefore, the proposition that I introduced to be inserted into Article XIII, the Public Officers Law, accomplishes the effect by adding seven words. It merely says that "no other oath, declaration or test (new language) including the requiring of ownership of real property." It goes on in the regular language: "... shall be required as a qualification for any office of public trust." I believe it still belongs there, and I know in Judge Walsh's proposition it says: "The appropriate article of the Constitution is hereby amended."

Now, his language takes about 20 words. If we are interested in brevity, I would call this to the attention of the Committee on Style and Arrangement and the Committee on Presentation with respect to locating it in the Constitution. However, I endorse the proposition in principle 100%.

The present law, as delegate St. Lawrence pointed out, does prohibit anybody except an individual owning real property with a deed recorded on record from holding office in a village or town. As Judge Walsh was pointing out from the history, we have had restrictions in the past all the way through. In our first Constitution, a man desiring to vote or hold public office had to own substantial real property and personal assets; it started off around two hundred fifty pounds, and worked its way down to fifty pounds.

This right to hold public office was restricted, and in the early development of the State the economy was based on farming and the primary source and means of wealth was the ownership of land and the use and utilization of land. To my way of thinking, the intention was pretty clear. It was to restrict this right to vote and to govern to those who had economic interests in the community and roots in the community, believing, I assume, that those who had the interest could better govern not only for their own interest but for the interest of everybody in the community.

Gradually we have seen these restrictions removed, as we saw our suffrage article, and many restrictions have been taken away that were long overdue, and should have been removed years ago.

Today our economy is varied and our citizens are city-oriented. The population is constantly increasing and land for home ownership is becoming more and more acute. This situation is becoming more and more serious and land is becoming more scarce. A citizen more often than not today is a wage earner and a renter; he is not an owner of real property.

Under the present law, I would maintain competent citizens who can make a significant contribution to the art of government—local government in our towns and villages—are being deprived of the right to hold office; and, the converse, the town governments and the village governments are being deprived of their tremendous talents. This is a seventeenth century anachronism.

This ownership of property is a condition precedent for the holding of public office and it is long overdue for change. No citizen should be denied this right to hold public office because he does not own a piece of property.

We have a tremendous broad tax situation and a man may not own property but he pays taxes—income tax, sales tax and other forms of taxation—so he does participate in the formation of government and its policies.

We are now in the twentieth century and this anachronism goes back to the seventeenth, and I think it should be removed right here at this Constitutional Convention.

Delegate St. Lawrence pointed out the background of the legislation on this subject, which history I was not familiar with, and I am grateful to him for that. I endorse his point of view also because we want to induce young people to

come into government, and do away with this idea of telling them, "Well, you can vote but you cannot hold office."

Many of the young people who are between the ages of 23 and 30 are not home owners. The home-owning market runs around the age 30, 31, 32 and 33, which is the time when most young people secure their first homes or become owners of a piece of property which would qualify them. Therefore, in summation, I would support this and request all the delegates on both sides of the aisle take a step forward to get this Constitution into the twentieth century while we still have an opportunity at the Constitutional Convention, and further request that the Committee on Style and Arrangement consider locating this in Article 13, the public officers law, similar to the proposition that I first introduced, No. 43.

Thank you, Mr. President, and I urge everyone to support Judge Walsh's proposition.

THE PRESIDENT: The Chair recognizes Mr. Tyler.

MR. TYLER: Mr. President, delegates to the Convention, I think I should tell the convention that this proposition was considered by the Committee on Bill of Rights and Suffrage along with the suffrage article doing away with the qualifications for voting. We felt that both propositions ought to be before the House at the same time and we unanimously reported this bill for the favorable consideration of this Convention. We urge its passage.

THE PRESIDENT: Mr. Berry.

MR. BERRY: Mr. President, fellow delegates, I do not think this proposition need detain us very long. I just wanted to respond briefly to Mr. St. Lawrence, and to tell you that as far back as my experience goes this requirement has not had the slightest discriminatory effect. We have nominated and elected our town and village officers without the slightest reference to whether they are property owners or not. It is a technical requirement and if we happen to nominate and elect somebody who is not a property owner, the town attorney, before he takes his oath on January 1, would see to it that either his wife re-executes the deed or any real estate broker can provide him with an undivided inch and a half or a foot of land, and he qualifies to meet the requirements. It is an archaic provision, but that will eliminate any minor inconvenience. I am all in favor of its removal.

THE PRESIDENT: The Chair recognizes Mr. Dinkins.

MR. DINKINS: Mr. President, I, too, am in favor of this proposition and I would remind Delegate St. Lawrence that when we served in the 1966 Assembly together he gave me the privilege of joining him in the bill. And I might add that I think that he was moved to offer his bill on that occasion because there was a situation wherein a man had been elected Councilman of the town of Ramapo in Rockland County and his Republican opponent who had suffered a defeat saw fit to bring a lawsuit, and so it was not so easily resolved. I urge you all on both sides of the aisle to vote in favor of this proposition.

THE PRESIDENT: The Chair recognizes Mr. Burns.

MR. BURNS: Mr. President and ladies and gentlemen, I rise to support this proposition of Judge Walsh. I am not constrained to stand on the floor, however, and refer to this as archaic, old-fashioned, outdated, outmoded, but rather to say that this Convention is doing what its job is to do, and that is to examine each of the present provisions of our Constitution and make appropriate changes with the present and future in view.

Now, I was on my feet the last couple of days, to speak briefly about the use of property qualifications in certain instances, and especially regarding special districts and towns, and that matter was addressed here yesterday, and a decision

was made on the proposition then and the proposition then presented. However, this is different. And I would agree today, in the modern way of doing things, that people in communities selecting their officers do so based on the merits of the ability of the individual to properly perform the duties of the office of that which he seeks.

I submit it is no longer necessary to use property as the qualification, as merely some instance of the stability of an individual in his community, but rather today, especially with the communications media being so broad, with the use of television and radio and newspapers—and, yes—in the small communities with the modern techniques of fliers in the front door, of having the community made aware of the respective qualifications of all of the candidates who seek office, that the requirement to own property to hold office is no longer useful or necessary.

As for Mr. St. Lawrence's remarks, I subscribe to the things that he said here today. I would inform all of you that Mr. St. Lawrence is Chairman of the Joint Legislative Committee on the Revision of the Town Law, and I know, as he holds hearings beginning early next month, that he also will bring back to the Legislature the matters which he discerns as they hold the hearings and seek to look more fully into all provisions of the town law to which he referred today.

I would say also, however, it would be a fine opportunity for members of the Joint Legislative Committee to seek further the advice and assistance of those whose duty it is today to administer the affairs of our town in order to make suggestions for statutory changes in the Legislature, again beginning in 1968.

As far as the property qualifications to hold office are concerned, they are no longer necessary or useful. In my judgment, this is the proper time to make a change. But as I said before, I do not consider that that has to be something that has long since outlived its usefulness, but it is simply a program now that seeks to make change for the sake of improvement in the overall conduct of the business of government in this great State of New York. I shall vote in the affirmative for this proposition.

THE PRESIDENT: The question occurs upon the advancement of the proposition. The Secretary will call the roll.

(Whereupon, the Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 172; noes, 3.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

Before the Secretary calls the next proposition, I want to announce that at this time and effective this date, the appointment of Delegate Charles E. Rice to membership on the Committee on Education replacing Miss Rosemary Gunning.

The Secretary will continue with the call of the calendar.

THE SECRETARY: (Reading) Proposition No. 1345 by Rules. A proposition to insert in the proposed new Constitution a section, in relation to payment of State debts.

THE PRESIDENT: The Chair recognizes Senator Greenberg.

MR. GREENBERG: Mr. President, this proposal continues an existing provision in the Constitution, Article Seven, Section 16, and makes no changes whatsoever. It relates to the provision for the payment of the interest and principal annually, appropriations by the Legislature of these monies for the purpose of repaying monies that have been borrowed for bonds and otherwise.

THE PRESIDENT: Does any delegate wish to be heard upon this proposition? (There was no response.)

The question occurs upon the advancement of proposition. The Secretary will call the roll.

(Whereupon, the Secretary called the roll.)

THE SECRETARY: Ayes, 175; noes, none.

THE PRESIDENT: We have reached that point. Someone asked the question if we were ever going to pass one unanimously. That was it.

(Applause)

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement. The Secretary will continue reading.

THE SECRETARY: (Reading) Proposition No. 1346, by Rules. A proposition to insert in the proposed new Constitution a section, in relation to the submission of the Executive Budget to the Legislature.

THE PRESIDENT: The Chair recognizes Senator Greenberg.

MR. GREENBERG: Mr. President, I offer the following amendment, move its adoption, waive its reading, and would briefly explain it.

THE PRESIDENT: Without objection, Senator Greenberg.

MR. GREENBERG: Gentlemen, this amendment onto this proposition has to do with Section Two, Article Seven. This is the first section of the Article—we are now getting into the area of the budget, which is part of Article Seven. This amendment adds to the proposition you have before you the language that the budget shall be submitted at least sixty days before the beginning of the ensuing fiscal year.

In the Constitution as it exists now, the dates of submission are fixed in the Constitution. The Committee has felt that this properly should be a matter of statute, and the way the proposition was originally drawn, the dates of submission were entirely omitted. However, in order to allay any fears on the part of anyone, the public, or Legislators, that without some provision in the Constitution with respect to at least a minimum, that it would have been possible under the original language as it is in the printed form before you for the budget to be submitted entirely too close to the beginning of the ensuing year to give the Legislature and the public the opportunity of really studying it and know what it was all about. Therefore, it was agreed that the proposition be amended in this manner, namely, at least sixty days prior to the beginning of the next fiscal year the budget is to be submitted.

Now, the primary purpose in connection with this change that will go into effect if this proposition is adopted as amended is that it will make it possible without resorting to any Constitutional amendment that if, at any time in the future, a governor and the Legislature may deem it advisable to change the State's fiscal year. Without Constitutional provisions, such as are now contained in the amendment before you, it would not have been possible to change the fiscal year without going to the people after two successive legislatures and having the Constitution amended with respect to the submission date, and we think that this amendment and the proposition are in the interest of good government and make for orderly procedures. This gives the Governor ample time for submission of the budget after his election in November and gives the Legislature and the people ample opportunity to study and analyze the budget, and I trust the amendment and the proposition will be advanced.

THE PRESIDENT: On the amendment, Judge Botein.

MR. BOTEIN: Will Senator Greenberg yield to a question.

THE PRESIDENT: Are you discussing the amendment, now, Judge?

MR. BOTEIN: Yes.

THE PRESIDENT: Senator Greenberg, will you yield to a question from Senator Botein?

MR. GREENBERG: Yes.

MR. BOTEIN: I am heartily in accord with the proposition and the amendment, and I would just like to ask Senator Greenberg—and now I am speaking in my capacity as Chairman of the Committee on the Executive Branch—whether his committee contemplates any further changes in the Executive Budget such as, for example, eliminating the provision in Section Four, which virtually mandates a line item budget in favor of a so-called performance, a program budget and so forth, because that would give the kind of guidance to our committee which would be invaluable.

MR. GREENBERG: Judge, this matter has been, is being, and will be further considered, and we expect within the next week or so to have another proposition which would deal with the subject that you have just mentioned.

MR. BOTEIN: A line item?

MR. GREENBERG: It will deal with this subject, yes, and I also want to make it clear, Mr. President, and members of the Convention, that this minimum of sixty days, as provided for in this amendment to the proposition is not intended to be a maximum, but we want at least that many days before the beginning of the ensuing fiscal year.

MR. CORNELL: Mr. President.

THE PRESIDENT: The Chair recognizes Senator Cornell.

MR. CORNELL: Mr. President, members of the Convention, I am glad to add my word of support to this proposal as amended in the original form. I thought it was defective in that it permitted the words "provided that annually as provided by statute the Governor shall submit to the Legislature . . ." We felt that was much too flexible. I am in favor of flexibility. We want to add to that as much as we can, but in this respect, we saw the possibility that the Legislature and the Governor might, under certain circumstances, be forced to submit a budget with such short notice that the public at large would have had no opportunity to consider such budget and raise any objections that they might have at public hearings and so forth. Accordingly, we thought it should be brought more closely to the present provisions which permit of introduction to the budget either sixty days, at least sixty days, or in the event in the years when the Governor is elected, it is sixty days; or when he is not elected in the succeeding years, it actually works out to seventy-five or eighty days. So we give this discretion to the Legislature, but it must be at least sixty days so that this will guarantee to the people at large across the State the opportunity to examine the budget and to present their views. This also applies to members of the Legislature as well.

Accordingly, the proposition as amended seems to be in order and I certainly would support its passage.

THE PRESIDENT: The question occurs upon the adoption of the amendment.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: I want to inform the members of this Convention that it is the intention of some of us who are in the Legislature and who will, hope-

fully, be there next January to propose legislation which will fix for the submission of the budget the same dates that we now have. In other words, February 1st, or next year it will be February — no; it will be a little earlier than February 1st, because there is no gubernatorial election this year; and in the event that consideration is given to changing the fiscal year, it is our thinking that at the most, we would change by statute the date of submission to about February 15th if the fiscal year were July 1, as by way of illustration.

In other words, we are not thinking of making any drastic changes in what we now have, but we do feel that we should be in a position to make changes as conditions change.

MR. BURNS: Senator Greenberg, would you yield to a question?

THE PRESIDENT: Just a moment. All right, Mr. Burns.

MR. GREENBERG: Yes, Mr. President.

MR. BURNS: Senator Greenberg, do I understand then that your amendment would have the Governor present his budget not less than sixty days before the beginning of a new fiscal year, and that would get down to about January 29?

MR. GREENBERG: Well, yes, February 1st, actually February —

MR. BURNS: If your amendment stays with sixty days, would you not say then, sir, that you might not have the dates made later than February 1st? Because you did not mention February 15, and you know there is a provision presently under some circumstances, such as a new Governor, where you would have an extra fifteen days; and I am just curious whether sixty days is the proper one or forty-five would be better, if you have in mind to use the February 15th?

MR. GREENBERG: Under this amendment, with the use of sixty days, we have eliminated that part of the present Constitution which mandates in those years other than the years following the Governor's election we get it around the twentieth of January; that is being changed by this sixty day provision.

MR. BURNS: To get it down to the first of February?

MR. GREENBERG: Exactly. We think that is sufficient.

MR. BURNS: But no later?

MR. GREENBERG: That's right.

THE PRESIDENT: Judge Sobel.

MR. SOBEL: May we have the amendment read, please?

THE PRESIDENT: Senator Greenberg, do you have it with you there? Will the Clerk please read the amendment?

MR. GREENBERG: He wanted it up there, Mr. President.

THE PRESIDENT: I thought you had a copy with you, Senator.

THE SECRETARY: (reading) Page 1, line 4, strike out "annually as pro-," strike out line 5. Line 6, strike out "budget containing" and insert the following: "at the time fixed by statute but not later than 60 days prior to the commencement of each fiscal year of the State, the Governor shall submit to the Legislature a budget for such fiscal year which shall contain. . . ."

MR. BURNS: Mr. President, may we have the reading repeated, please?

THE PRESIDENT: Yes. The Clerk will read it once again.

THE SECRETARY: (reading) Page 1, line 4, strike out "annually as pro-,"

strike out line 5. Line 6, strike out "budget containing" and insert the following: "at the time fixed by statute but not later than 60 days prior to the commencement of each fiscal year of the State, the Governor shall submit to the Legislature a budget for such fiscal year which shall contain. . . ."

THE PRESIDENT: The question occurs upon the adoption of the amendment.

MR. CAMPBELL: Mr. President.

THE PRESIDENT: Mr. Campbell.

MR. CAMPBELL: Will Senator Greenberg yield?

MR. GREENBERG: Yes.

MR. CAMPBELL: Senator, I am obviously not opposed to this amendment, but I am convinced that 60 days is too short a time for consideration of the budget, the size of the New York State budget and the complexity of the programs it involves, and you commented several times on the potential of changing the fiscal year. You indicated as a legislator it was your intention that the present dates in terms of submission would be re-enacted in the new section, assuming the Constitution is adopted. Would you be willing to speculate on the potential of changing the fiscal year so there might be more time to give consideration to the budget in the Legislature?

MR. GREENBERG: For whatever value speculation may have, Mr. President, if the fiscal year of the State did not have the impact which it does have on the budgets of many of our political subdivisions, I think I can say without any hesitancy, particularly in view of the history of the last three years with short sessions of six months each—rather '65 and '66, this year we were fortunate in having a Constitutional Convention—I don't think there would be any trouble in getting the fiscal year pushed up, but I hesitate to make any commitments or definite statements in that respect until the entire subject has been amply studied.

Well, I have been reminded of some very good reasons why it would be advisable to push our fiscal year up, but until we have studied the entire problem, Professor Campbell, and know what its impact is on the budget of other local units of government, I hesitate to forecast what we are going to do.

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor indicate by saying aye; opposed nay.

The amendment is adopted.

The question occurs now upon the advancement of the proposition as amended by the Greenberg amendment. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 175; noes none.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

At this point I would like to state on behalf of the leadership that if anyone wants to offer an amendment to any proposition he should advise the leadership on both sides of his intent to offer an amendment. I ask the delegates to cooperate on this point so the leadership will know what the amendment is about and will be able to pass on the necessary information to their respective membership.

The Secretary will continue with the call of the calendar.

THE SECRETARY: Proposition No. 1347 by the Committee on Rules (at the request of the Committee on State Finances, Taxation and Expenditures), a proposition to insert in the proposed new Constitution a section, in relation to authorizing the state to contract debts in anticipation of the receipt of taxes and revenues.

THE PRESIDENT: The Chair recognizes Senator Greenberg, and I might say, Senator Greenberg, that last announcement didn't directly apply to you, because you did at least advise me, and I trust that you advised Senator Brydges of that also.

MR. GREENBERG: Mr. President—

THE PRESIDENT: I just use this as an opportunity to make the statement.

MR. GREENBERG: I want to use this opportunity of telling you and the members of this Convention that with Senator Cornell as my Vice-Chairman, we have no secrets, and he knew exactly what was going to be done, as a matter of fact, he was the one who started the ball rolling in that direction.

THE PRESIDENT: I am sure of that, Senator Greenberg, that is why I said it did not apply to you on this occasion. I used that as an excuse to bring that point to the attention of the other members.

MR. GREENBERG: Mr. President, with respect to Proposition No. 1347, this is a continuation of Section 9, the first paragraph of it is verbatim, and it merely provides for the right to borrow money in anticipation of tax revenues, and the repayment within the one year period as now provided by the Constitution.

THE PRESIDENT: Any delegate wish to be heard on this proposition?

The question occurs upon the advancement of the proposition. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 175; noes none.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

Committee notices.

THE SECRETARY: Committee on the Executive Branch will meet at 8:30 P.M. Wednesday, July 26 in Room 436.

THE PRESIDENT: May I remind the Chairmen that the date for final reports of committees is August 14. I would recommend to the Chairmen that they continue their labors well on into the day and night every day in the week if necessary, to accomplish their work so that we will be prepared to deal with the calendars as we go along.

Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I now move the Convention stand adjourned until tomorrow at 2:00 P.M.

THE PRESIDENT: So ordered.

(Thereupon at 3:35 P.M. a recess was taken to Wednesday, July 26, 1967 at 2:00 P.M.)

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### WEDNESDAY, JULY 26, 1967

THE PRESIDENT: The Convention will come to order. Will the delegates please take their seats?

REV. HAROLD C. BAUM: Let us pray. O God, Whose law is truth, we beseech Thee so to guide and bless the Constitutional Convention of this State that it may ordain for our government only such things as please Thee to the glory of Thy Name and welfare of Thy people, through Jesus Christ, our Son and Lord. Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will read the journal of yesterday's proceedings.

THE SECRETARY: In Convention on Tuesday, July 25th, 1967—

MR. GALIBER: Mr. President.

THE PRESIDENT: Mr. Galiber.

MR. GALIBER: Mr. President, I move we dispense with the further reading of the journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered.

Calendar of the day. Propositions in the order of second reading. Page 2. The Secretary will read.

THE SECRETARY: Proposition No. 1335 by the Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to taxation of intangible personal property.

MR. GREENBERG: July 31st.

THE PRESIDENT: July 31st.

THE SECRETARY: Proposition No. 1336, by the Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to the power of taxation.

MR. GREENBERG: July 31st.

THE PRESIDENT: July 31st.

THE SECRETARY: Proposition No. 1351, by Rules. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to exemptions from taxation.

MR. GREENBERG: July 31st.

THE PRESIDENT: July 31st.

THE SECRETARY: Proposition No. 1352 by Rules. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to taxation of intangible personal property.

MR. GREENBERG: July 31st, sir.

THE PRESIDENT: July 31st. All four are laid aside.  
The Chair recognizes Mr. Brown.

MR. BROWN: Mr. President, I ask unanimous consent to make a brief statement.

THE PRESIDENT: Without objection, Mr. Brown.

MR. BROWN: Mr. President and my fellow delegates: We heard yesterday some remarks by Mayor Corning, my seat mate and an answer that was given by the leadership of the Convention. However, in answering Mayor Corning, the leadership failed to make mention of two things which would militate against our holding election or presenting the Constitution to the delegates this coming election day. They fail to make mention of the fact that the cost would be vir-

tually prohibitive if the Constitution were voted upon on a day other than this coming election day.

Mayor Corning in his remarks made mention of the fact that he thought that the voting should take place over a three-day period. By my quick computations, what with the cost of inspectors, police and the additional movement of machineries we would charge the State approximately ten million dollars. Even if the special election were held on one day, the cost would be approximately \$5,000,000. And another point that I think was not mentioned by the leadership in their answer was the fact that if this particular vote were held on a day other than election day, virtually every person who was opposed to the new Constitution would come out in force. I assume that a good many of us have been active in politics over a period of time, and those of us who have been around know full well that on special elections or when special issues are at stake, it is the "againers" who are always coming out.

However, there was one point that I think should be mentioned over and above these two issues and that was in response by Assemblyman Weinstein and by Senator Brydges. Both of them made mention of the fact that this Convention must conclude by September 26, and in so doing, I think they failed to realize that we, in writing a document of this sort must keep in mind the substance. This should not be a question of speed, nor should it be a question of expediency, and that every single proposition that is brought out on this floor should be fully debated even if—and this I say overrides what I said before—even if it requires us going past the September 26th deadline, and I would urge the delegates in their deliberations to keep speed in the foreground and keep substance in mind at all times.

MR. DURYEA : Mr. President.

THE PRESIDENT : The Chair recognizes Mr. Duryea.

MR. DURYEA : I ask unanimous consent to make a statement.

THE PRESIDENT : Without objection, Mr. Duryea.

MR. DURYEA : Mr. President, I well recall that on one occasion last week it was indicated that this body would be in session through tomorrow, and I recall, as we viewed the calendar on Monday of this week we noticed that there was very little of substance to come before this house. I don't believe that we can say that the activity of yesterday, the manner in which our work was done in so far as dealing with content is concerned, will ever bring great credit upon the delegates of the 1967 Constitutional Convention. I think I know now, sir, why we heard a presentation by the distinguished Mayor of the City who is also an outstanding delegate to this Convention, suggesting that maybe we should prepare for that day of September 26 when we would find our job undone. I must say, now I understand why that statement was made. We are now going through the throes of that great preparation. We have called this most deliberative body into this Chamber to immediately put over four bills and not work today and then leave this City. Now, I know many have said that this Convention is like an iceberg, that all the work is history, it is being done in committee; the effort is being expended where no one can see it. I am afraid, sir, that the iceberg is sinking, it is going deeper in the water, it is not getting any lighter, and as a result has jettisoned twenty propositions, some of doubtful origin. If our mission in this Chamber and in this Convention this year is to carry weight, we have got to get the iceberg up out of the water. We have got to properly deal with those propositions which have been introduced, and we must work. Work in no one's mind in this Chamber means convening on a Wednesday two months from the date that we had hoped to adjourn. This is not the way to find that goal. I am afraid I must say—and I do hope this does not

sound at all partisan—that I feel that rather than be concerned with these few measures that were put over until the next week, that many of us stayed here today to pay homage to the distinguished junior Senator of the State of New York. I, sir, along with men on both sides of the aisle, although I have respect for him as a leader, have much more to do today of serious consequence and I urge you and those who are planning a role in this Convention in the way of finally preparing this document, that you will chart out a path into the decades ahead a more meaningful effort rather than that upon which we have embarked this afternoon.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Weinstein.

MR. WEINSTEIN: I was very happy to hear my distinguished colleague talk about icebergs. I think his remarks reminded me that an iceberg is ten percent exposed, ninety percent you can't see, and mostly it is at sea, and I take it as far I am concerned, speaking for myself, these remarks were very much at sea. If I want to put it in the parlance that is known to most of us, I would say they are all wet, because no such occurrence took place as a practical matter. I must tell you that this morning several very important meetings were held by the committees. I must tell you that many of the committee chairmen who have labored here, not Monday and Tuesday, but Wednesday and Thursday and Friday and Saturday, have prepared some fine articles which they are going to present to the members of this Convention for your examination and your consideration. I think it is very poor sportsmanship on our part—and I use the word sportsmanship to now portray the fact that we stayed here because we paid homage to a junior senator. I am delighted to be a member of the junior senator's party and quite honored because I think the contributions made have been considerable for the welfare of the people of our State, but I assure you, in speaking for myself, and I am sure I speak for the members of both sides of the aisle, that we do not have a session today because the distinguished senator or anybody else who is visiting to testify at an open hearing which was called by a chairman who is a member of our Convention.

I am beginning to tire a little bit of the fact that we are all beginning to become "Calamity Janes" and worry about the fact that we are not making progress. From where I sit I am not blinded at all by these remarks because I can see we are making excellent progress, and I would feel quite badly if, on the other hand, some of our distinguished chairmen were to hurl into your midst articles which were ill-conceived, not thought out, just so you could have a lot of fun amending them 400 times and thus delay the session.

We were elected for a purpose, and it makes no difference what political philosophy you espouse or what party you come from. Every man and woman in this House, I have great respect for their political integrity and their personal integrity, and I don't think it is fair to say to us, to any one of us, that we stay here to do certain things—to pay homage to anybody, and we spend the time of 186 important men and women because we are getting a visit from a distinguished Senator. I might point out that if it was the other Senator, the senior Senator, I would also be delighted to welcome him to the midst of a Convention in Albany with as much grace as I think all of us would like to welcome the junior Senator, and we have done that on many occasions, for Mr. Duryea's information.

Why don't we stop kidding ourselves once and for all and begin to work instead of all this business about the fact that we are not getting anywhere. I would like to inform you too that there was a request made of me as the Majority Leader that this session be held earlier so that many of the men could have an opportunity to attend to some personal affairs. I took the matter up with some

of the most distinguished chairmen, and I am happy to tell you and proud to say so, that they felt the duties and efforts of the chairmen of these committees and the committees were so important that we could not move this session to an earlier time, and these meetings were held. Now, if you want to do away with the committee system under which we are working and the meetings and everything and just have someone hand you a document, like that woman who wrote to all of you that I had a prepared document, then do so and let's forget this whole business and we can save the taxpayers many millions of dollars. But if you want to sit here and forget these petty differences and the misunderstandings and realize that we are now much further ahead than previous Conventions were—and I am referring to the '38 one and the '15 one—in our deliberations, that we were successful just a day or two ago in passing one of the most far-reaching articles in the history of this country and the history of the State where we gave the right of franchise to millions of our citizens, and we destroyed, we struck out, we uprooted the idea of property rights for people to hold public office or public trust. Don't you think that is progress? I like to think it is progress. I am ready to go back to the people of my constituency and say I am working and I am making progress, and I believe with all my heart, with all the sincerity that I command that come September 26th, under the leadership of our President and the fine men and women of this Convention, all of us, that we are going to present a document which will contain the best that we can do for the benefit of generations to come.

Now, let's stop quibbling, that time could be better spent in discussing and deliberating and arguing about the various pieces of legislation or propositions that are going to be presented to us. I have said before, and I want to tell you again, it is an interesting thing to look at legislation rather than to look at laws. As a matter of fact, I have come to the conclusion that sometimes we don't make laws or constitutions because the good people observe it anyhow, they don't need laws, and evil people don't pay any attention, and I think it is time that we stop trying to present ourselves as worried about what the outcome of the future of our constitution is going to be. We are going to write a constitution and then we shall give it to the final judgment, the electorate, who will decide whether or not we have prepared that kind of document which is most important.

I say again to all the members—this is not said with partisanship—that it is time for us to stop quibbling and worrying about time because I can assure you that if it was necessary we would stay here Monday, Tuesday, Wednesday, Thursday, Friday and even Saturday.

THE PRESIDENT: The Chair recognizes Judge Botein.

MR. BOTEIN: Mr. President, I, too, believe that Mr. Duryea has put the sound and fury of Convention sessions above the productivity and the substance of Committee work. August 14 is the deadline date for Committee reporting. Until that time, I believe as much time as possible should be available for Committee work.

I was one of the Chairmen consulted by Mr. Weinstein about an earlier date, as was Professor Campbell, and we insisted upon preserving the time we had allocated to our Committee work.

Now, I know this casts on the leadership on both sides of the aisle very delicate balancing so that there can be sufficient time for Committee meetings and sufficient time for the Sessions, but I think that until August 14th the emphasis should be placed upon Committee work and in the long run we will make speed much more assuredly if we do that. It's like somebody saying he did not have time to write a short brief.

Now, if our Committee were stampeded into getting out propositions at an earlier date than the kind of consideration we are giving now, which it requires, we would, and other Committees could, well deluge this body with all sorts of

ill-considered and ill-digested propositions. I, for one, say that we should adhere to the present practice. Of course, at times there will be an under-estimation or over-estimation and we will have to sit longer than estimated or, as today, for a much shorter time than estimated; but I am quite sure that if the Committees are given the time to do the kind of job that they should do, on and after August 14th, there will be no gaps in the session deliberations.

MR. LEVY: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Levy.

MR. LEVY: Mr. President, I would like the unanimous consent to make two statements, each of a different nature.

THE PRESIDENT: Without objection, Mr. Levy.

MR. LEVY: One is that perhaps we could put a stop to some of this and go on record to note that the members on the other side of the aisle have gotten up continuously and said "I didn't intend to make a statement," and proceed to make a statement, and another gentleman getting up saying, "I don't mean it to be partisan," but goes ahead and attacks the members of the other party. So much for that.

I would like now to have the privilege of presenting a gentleman and his son, a gentleman who is a former member of this Assembly and an unsuccessful candidate for the position of delegate, Mr. Matt Dwyer, and his son, Donald. Thank you very much.

THE PRESIDENT: The Chair is pleased to welcome my former colleague, Matt Dwyer, and his son, to the deliberations of the Convention and trusts that they enjoy same.

MR. SHAPIRO: Mr. President.

THE PRESIDENT: Mr. Shapiro.

MR. SHAPIRO: Mr. President, may I have the privilege of unanimous consent to make a statement.

THE PRESIDENT: Without objection, Mr. Shapiro.

MR. SHAPIRO: I have listened with rapt attention to what Mr. Perry Duryea had to say and the remarks of Mr. Weinstein and Judge Botein. Not being a politician, I do not want to enter into the controversy. As a matter of fact, so you will not think that is funny, I do not know how I became Chairman of a Committee.

I have in my hand the complete article on the Legislature ready to present it to this august body. To me that is making progress, but I have got to proof read it to make sure that there is no mistake in one word or two words, because they may, by leaving out a "not" or putting in the word "not" where it does not belong, change the sense of what the members of my Committee have agreed upon.

Now, I think that is making progress, where we have the entire article on the Legislature ready now for consideration by the members, and nobody can say we have been dilatory. I think we are making haste slowly in the right way and in the right direction, and I do not think we should be subject to partisan criticism.

MR. BEAME: Mr. President.

THE PRESIDENT: Mr. Beame.

MR. BEAME: Mr. President, I agree whole-heartedly with Judge Shapiro, Judge Botein and Mr. Weinstein, and I just want to say that if we did not

have the time available to us this morning, my committee could not have done what it did, and that was to report out a complete article upon authorities.

MR. DURYEA: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Duryea.

MR. DURYEA: Mr. President, if I may, I would like to bring to Delegate Shapiro's attention the fact that Style and Arrangement has rather broad scope. As a matter of fact, I heard Delegate Fisher say that it could go so far as to determine whether or not voting age could be increased after it has once been lowered. So, therefore, Judge, I think if you have your proposition reported out today, Style and Arrangement can take care of the "nots" and the commas and the semicolons.

THE PRESIDENT: The Chair recognizes Mr. Matthews.

MR. MATTHEWS: Mr. President, in addition to being a delegate to the Constitutional Convention, I am also President of the Kingston area Chamber of Commerce and I would feel remiss if I did not call to all the delegates' attention the lighted painting above the door in the West Gallery: 190 years ago this coming Saturday, the first Governor of the State of New York took his oath of office in our community, and I hope you all properly observe it on Saturday.

THE PRESIDENT: Does any delegate wish to be heard?  
Committee notices. The Secretary says there are not any committee notices.  
Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I now move that the House stand adjourned until Monday at 2:00 P.M.

THE PRESIDENT: So ordered. July 31 at 2:00 P.M.  
(Whereupon at 2:34 P.M. the Convention adjourned until Monday, July 31, 1967 at 2:00 P.M.)

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### MONDAY, JULY 31, 1967

THE PRESIDENT: The Convention will come to order and will the delegates please assume their seats.

REV. DONALD J. CURRAN: Almighty God, we are not very bright, therefore, we ask for wisdom; we are not very brave, therefore, we ask for courage; we are not very broad-minded, therefore we ask for vision.

Please help each of us to know when to compromise and when to stand and fight. Please help each of us to know when to take ourselves seriously and when to laugh at ourselves.

Most of all, please help us to remember that as Constitution writers, we are not here to serve ourselves but to serve the people of New York State; to serve the people of New York State not just for today but for many, many tomorrows.

This is a big job. We need help. Almighty God, we ask Your help. Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will read the journal of proceedings on Wednesday, July 26th.

THE SECRETARY: (Reading) In the Convention on Wednesday, July 26—

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I move we dispense with the further reading of the journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered. Message from the Governor. Secretary will read.

THE SECRETARY: To the Constitutional Convention: There is presently before the Constitutional Convention a proposal to extend the system of electing judges to include all judges in the State.

This proposal is, in my judgment, an unfortunate reversal of the actual needs of the Judiciary in the State.

Rather than extending the election of judges, I strongly endorse and urge this Honorable Body to adopt an appointive system for selecting our judges.

I urge the adoption of a system whereby judicial nominating committees would be established to recommend to the Governor, or other appointing authority in the case of appointments to the lower courts, lists of the best qualified lawyers from which judicial appointments would be made. These committees should be composed of eminent lawyers and laymen alike.

We live in an era of rapid evolution and increasing complexity of our laws. The last ten years have witnessed vast changes in the laws of New York State, including a completely revised Civil Practice Law, Commercial Code and Penal Law. Accordingly, a Judiciary equipped to handle the changes and complexities in our laws is needed as never before. While many excellent judges have been elected under the present system, the elective system nevertheless, is not the best method for consistently identifying and advancing only the best qualified men and women to the bench. A well conceived appointive system for selecting judges would not only usher in a new era of objectivity and impartiality in the selection of judges but would also serve to greatly strengthen our State's Judiciary.

The trend in our sister States is towards appointive systems. Six more States have adopted this system in just the last decade.

I urge this Convention to adopt a modern system, based on the criterion of judicial qualifications, for choosing the men and women responsible for the administration of justice in the State of New York. Signed/Nelson A. Rockefeller.

THE PRESIDENT: The Chair recognizes Mr. Campbell.

MR. CAMPBELL: I should like to introduce the gentleman who delivered those challenges. Father Donald Curran, as many of you know, is a member of the staff on Local Government and Home Rule.

Father Curran received his priestly training at St. Louis in Innsbruck and from there went to the University of Wisconsin where he received a Ph.D. in Economics. He is presently at Canisius College where he is a Professor of Economics.

As the members of the committee know, he has worked hard and long with us in trying to work out many of our problems.

May I say that this fall Father Curran will join the staff of the Urban Study Center in Boston and that that position requires him to be there in mid-September, thereby making it essential, Mr. President, that we complete the work of this Convention by that time.

Thank you very much.

(Applause)

THE PRESIDENT: The Chair, of course, is very pleased to welcome Father Curran and to have him deliver the invocation this afternoon. I am sure that all of us are pleased to know that he is one of our hard working staff members

on the Committee on Local Government, which, I think, is one of our most intriguing committees. He has shown devotion and dedication to the work of this committee that is certainly beyond the call of duty, and I am very happy to have Father Curran with us today.

The Chair recognizes Mayor Corning.

MR. CORNING: I would like to ask that we welcome Miss Rita Irving to this Convention. She is a student at Vincentian and the daughter of Mr. and Mrs. Robert Irving. She is the first prize winner on the national level on the Poetry Contest sponsored by the Daughters of the American Revolution, and her mother is on President Travia's staff for the Convention and also a member of the Assembly staff. I trust we may welcome Rita to the Convention.

(Applause)

THE PRESIDENT: The Chair is very pleased to welcome this young lady. She has certainly proved her mettle in winning this contest that Mayor Corning spoke of. I am very proud, of course, that she is the young daughter of the mother who is one of my staff members in this Convention and who has done a tremendous job, and who is also on our staff in the Legislative service. As those of you who have had contact with her know, she works with Bill Lowenberg on my staff upstairs that takes care of all these problems each of us has in regard to news releases and newsletters and things of that type.

I am very proud and happy to have this young lady, Rita Irving, in our midst today and have her here on the rostrum, and I offer my congratulations to her on the fine job she has done.

(Applause)

MR. BREWER: Mr. President.

THE PRESIDENT: Mr. Brewer.

MR. BREWER: Mr. President, I ask unanimous consent to—I don't know how quite to put it, but to ask a favor of this body.

I in no way wish to detract from the very eloquent and moving invocation delivered by our visiting member of the clergy today, but, Mr. President, as you know and as all of the distinguished delegates here know, yesterday in the churches across our nation was a day calling for prayer for the tragic occurrences that have been occurring throughout our cities across this land, and my heart is torn by these things, and while it may sound a little corny to some of the members, I do arise and ask if we might just for one minute stand in silent prayer and join our supplications with those across the nation who yesterday prayed to Almighty God to restore peace and order to our beleaguered land.

THE PRESIDENT: May we please stand for a moment in silent prayer.  
(The delegates stood in a moment of silent prayer.)

THE PRESIDENT: The Chair recognizes Mr. Levy.

MR. LEVY: Mr. President, may I have unanimous consent, not that I want to take away any of the duties of Mr. Mangano, whom I don't see, but it wouldn't be proper if I didn't ask you to join with the Bronx delegation in wishing a very happy birthday to William J. Rooney, who is one of the delegates here today.

(Applause)

THE PRESIDENT: The Chair joins in extending the felicitations of the House to Mr. Rooney and may he have many more years of happiness and good luck.

Mr. Seldin.

MR. SELDIN: Mr. President, may I have unanimous consent to make a brief introduction.

THE PRESIDENT: Yes.

MR. SELDIN: Many of the delegates know my concern for those of our citizens who are mentally and physically disabled. I would like to introduce to this Convention a young lady who has overcome her disadvantage. Though blinded since birth, she is a girl who was an honor graduate of Sacred Heart Academy. Her story appears in yesterday's Long Island press, where it stated "a blind girl sees dream come true," because she has been accepted in the Dominican Convent in Blauvelt, New York to become a teacher of blind children. It is my privilege to present to this Convention—and I ask, Mr. President, you give her a warm welcome—Miss Maureen Scanlon, of Mineola, New York, who is seated in the gallery.

(Applause)

THE PRESIDENT: The Chair is very pleased and most pleased to welcome Maureen Scanlon to the deliberations of this Convention and I trust she will enjoy the same.

MR. TULLY: Mr. President.

THE PRESIDENT: Mr. Tully.

MR. TULLY: Mr. President, today visiting with us in Albany is the lovely wife and family of one of our devoted staff members, Mrs. Gerard Carey and her children, in the balcony behind you. I wish to welcome them.

(Applause)

THE PRESIDENT: The Chair wishes to welcome Mrs. Carey and the Carey family to this Convention.

MISS GABEL: Mr. President, I ask that Mrs. Jacob Ward and her two daughters, Edith and Rene, be welcomed to the Convention.

(Applause)

THE PRESIDENT: The Chair is pleased to welcome this family.

MR. WALSH: Mr. President.

THE PRESIDENT: Judge Walsh.

MR. WALSH: Mr. President, may I call the attention of the Chair to the presence today of a young man, and I am very pleased to call your attention to his presence. This young man is serving with you at the present time in the Assembly of the State of New York. I had the pleasure some years ago of meeting him and knowing him and knowing his family. I had also the great and esteemed honor of following his father as the City Judge in Utica, and now he has taken the seat which I had the pleasure, Mr. President, to occupy in the Assembly of the State of New York. I would like to point out to you at this time the Honorable John T. Buckley.

(Applause)

THE PRESIDENT: The Chair is pleased to welcome Assemblyman Buckley.

MR. DINKINS: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Dinkins.

MR. DINKINS: I interrupt the deliberations of this house to request that you extend your usual warm welcome and the courtesies of the floor and the privileges of the house to a man who has a long and distinguished record of

public service. This man is a former Assistant District Attorney for New York County, and has served the people of the State of New York as a Commissioner of Correction and as the Commissioner of Civil Service in the City of New York. For many, many years this man, who has been a member of the bar of the State of New York for more than forty years, has helped many fledgling young lawyers, including this lawyer, and I am privileged to call him my senior partner of some ten years today. This man in 1958 was appointed a member of the Committee to investigate the character and fitness of applicants to the bar of the Appellate Division of the Supreme Court in the First Judicial Department, of our distinguished Delegate-at-Large, the Honorable Bernard Bottein, the presiding Justice of this Court. This man of whom I speak was a member of this body in 1938, a delegate from the twentieth Senate district and served with great distinction on its committees of housing and education.

Mr. President, I request that you extend your usual cordial welcome to the Honorable Thomas B. Dyett.

(Applause)

THE PRESIDENT: The Chair is most pleased to welcome Mr. Dyett to this Convention and trusts that it will bring back some memories of the 1938 Convention. May I ask that he come up to the rostrum and sit with us on the rostrum for a while?

(Applause)

THE PRESIDENT: Calendar of the day. Propositions on the order of second reading, page 2.

The Secretary will read.

THE SECRETARY: (reading) Proposition 805 by the Committee on Judiciary, a proposition to amend the Judiciary article.

THE PRESIDENT: Judge Ughetta.

MR. UGHETTA: I ask that that be referred back to the Committee and re-committed.

THE PRESIDENT: On the motion of Judge Ughetta to re-comit.

All in favor indicate by saying "aye"?

Opposed?

Re-committed.

THE SECRETARY: Proposition No. 1333 by the Committee on Executive Branch, a proposition to amend article 5.

THE PRESIDENT: The Chair recognizes Judge Bottein.

MR. BOTEIN: August 7, please.

THE PRESIDENT: August 7.

THE SECRETARY: Proposition No. 1335 by the Committee on State Finances, Taxation and Expenditures, a proposition to insert a section in the article on taxation.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: August 1.

THE SECRETARY: Proposition 1336, by the Committee on State Finances, Taxation and Expenditures, a proposition to insert a section in the article on taxation.

MR. GREENBERG: August 1.

THE PRESIDENT: Lay it aside, until tomorrow.

THE SECRETARY: Proposition No. 1385-B.

MR. STOCKMEISTER: Lay it aside.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Proposition No. 1351, by Rules.

MR. GREENBERG: August 1.

THE PRESIDENT: August 1.

THE SECRETARY: Proposition No. 1352, by Rules, a proposition—

MR. GREENBERG: August 1.

THE PRESIDENT: Lay it aside.

The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President and fellow delegates: The Committee on Natural Resources and Agriculture held five full days of hearings, at which anyone who wished to be heard was given that opportunity. More people spoke on the Forest Preserve than any other topic.

In addition, we received hundreds of letters on that subject.

I am sure, Mr. President, that this Proposition expresses the desire of the overwhelming majority of our citizens with respect to the Forest Preserve lands of the State.

This Proposition retains in full all Constitutional protection now given the Forest Preserve. It reenacts exactly the first two sentences of the present Section One of the Forest Preserve article, repeating word for word the historic enactment of the 1894 Constitutional Convention.

It retains the right of any citizen to bring suit to prevent violations of the Article. In fact, it actually strengthens that right, by eliminating the present requirement that court approval be first obtained before suit is brought.

The Proposition would insure, despite such other action that this Convention may take with respect to amending the new or revised constitution, that proposals to change this article in the future shall be submitted for voter approval only after favorable consideration by two successive, regular sessions of the Legislature.

And it does this, Mr. President, in fewer than 300 words, compared to the 1,800 words of the present Article.

Few other proposals of this convention will be examined more closely by more people than this Proposition. I feel confident the voters will find in this Proposition something they can and will support overwhelmingly.

Let me remind the delegates that the platforms of both major political parties, in the last state-wide election, contained planks pledging full support of the Forest Preserve. By approving this Proposition, we will be redeeming those pledges.

The Committee, the staff, and many others have worked hard to bring to the delegates of this Convention a proper Forest Preserve proposition. We feel we have succeeded, and that the time has been well spent.

I think I can best sum up our feelings, and point up the importance of this Proposition, by quoting the words of a minority member of our committee, former Senator Watson Pomeroy, whose background and devotion to the Forest Preserve served us well in our deliberations.

In a report of a Joint Legislative Committee a few years ago, Senator Pomeroy said: "With the exception of the relatively small Baxter State Park in Maine, New York's Forest Preserve is the only state-owned wilderness available in the United States east of the Mississippi River. The importance of this unique

feature of the Preserve, both in offering escape from modern forms of living and in attracting tourist business to the state, cannot be over-emphasized. *Furthermore, once our remaining wilderness is lost, it is gone forever.* Future generations would then never be able to understand or experience what has contributed so much to our country's heritage of independence, life, or the enjoyment of leisure time in primitive wilderness."

Mr. President, I am proud to present this proposition to the Convention, with the favorable report of the Committee on Natural Resources and Agriculture, and to urge its approval.

THE PRESIDENT: The Chair recognizes Judge Bergan.

MR. BERGAN: Mr. President, I offer the following amendment to the Stockmeister proposal.

THE PRESIDENT: Judge Bergan hands up an amendment and asks that the reading be waived and he will explain the amendment.

The Chair recognizes Judge Bergan.

MR. BERGAN: This amendment provides as follows, that "the lands of the State now owned or hereafter acquired, constituting the Forest Preserve as now set by law, shall forever be kept as wild forest lands." This is an enactment of the Stockmeister proposal and of the present constitutional provision. "They shall be managed in trust," continues the amendment, "by the Governor, the Comptroller, the Attorney General, the temporary President of the Senate, the Speaker of the Assembly, the Chief Judge of the Court of Appeals and the Conservation Commissioner, who by virtue of their respective offices, shall be trustees thereof for the benefit of the people. The trustees, when authorized by the Legislature, shall develop recreational facilities in such lands, lay out trails and roads, institute sound conservation and reforestation procedures, provide for the development of wild life habitat and shall protect such lands from fire and devastation."

I submit to the Convention that this is a progressive, different, and a far-reaching proposal for the benefit, not only of our forest preserve, but for the people of the State.

The trusteeship in the proposal consists of the high offices of the State government, and is designed to answer the fears of the opponents of any charge that the timber resources of the State will be wasted. The fear is often expressed in the words, "Nor shall the timber thereon be so removed and destroyed," are taken from the Constitution. Historically, this fear is the reason why substantially these words were written into the Constitution at the Convention of 1894.

There was in the last century a profligate wastage of timber and other natural resources. In 1872, the Legislature set up a State Park Commission to consider the acquisition of forest lands and the Commission recommended the preservation of timber for economic reasons. The Commission called this "A measure of practical economy."

The Commission was expressly not concerned with recreation. The statute in 1885 provided that the forest lands "shall forever be kept wild forest lands," and prohibited their sale and lease. This statutory enactment of 1885 is the genesis and the origin of our present constitutional provision.

But under an Act in 1893, the Legislature authorized the Forest Commission to sell timber from the preserve. The policy of the Commission and the operations of lumber companies caused widespread adverse public reaction. There was a considerable wastage of timber. There was some connection between members of the Commission and lumber companies. This wastage of public timber occurred in 1893, just the year before the Constitutional Convention of

1894 was held, and it was fresh in the minds of the public. The reaction that had occurred led to the enactment of the present constitutional provision.

It is obvious from this background that the Convention of 1894 which wrote this provision into the Constitution, was thinking of timber and a means of preserving timber, and was not concerned with recreation.

This concern with timber and the distrust of the Legislature is today the main basis for continuing the present constitutional restriction. For example, David H. Bigelow, who is a representative of the New York State Conservation Forum, appearing before the Temporary Commission on the Constitutional Convention, said that any change made in the protective language of the present Constitution would, and I quote, "Deliver what is left of our wilderness to the mercy of the Legislature and it would be tantamount to putting the entire forest preserve up for final grabs and spoilage on the auction block."

It is a serious indictment of the New York State Legislature which is entrusted by the people with the appropriation of some \$4,000,000,000 in our budget to say of it that it doesn't have either the responsibility or the common honesty to manage the trees in the State forest preserve. This fear, emanating back from the condition which existed in 1893, the reaction to a wastage of natural resources which had occurred through the last century and which is typical of that period, this blind fear, I submit, is behind the fanatical resistance to any change whatever, any relaxation in the tightness of the control in the Constitution over the forest preserve.

Marked changes in the attitude of the State and of the people toward public reservations and natural resources have occurred since 1894. The great national parks have been developed in which millions of people annually visit the forest and the parks of the nation. The State of New York has maintained, everywhere but in the forest preserve, recreational facilities by which the people can enjoy its natural resources. Jones Beach, for example, and the Lake George swimming area are two examples of this progressive change in the affirmative utilization of our natural resources.

Within the last few weeks, the Northway has been opened up as far as Underwood, and this brings this high speed highway to the gateway to the high mountains of the Adirondacks. Underwood is the entrance to the Keene Valley area and to the great central massif of the Adirondacks.

The opening of this highway brings within four and a half hours from the George Washington Bridge, or maybe five hours if you want to be more careful, the great natural resources, the great facilities of the Adirondack Mountains to the people of the City of New York. Within the memory of some of us here it took a full day to get to Saranac Lake by train and wagon, or automobile. The Adirondacks are today almost at the doorstep of the City of New York and of all the great centers of population of the State.

In summing up the changes which have occurred in the attitude toward public forests and in the attitude toward public recreation since the 1894 amendment, the Office of Legislative Research had this to say, and it is a very interesting commentary. There has occurred "an increase in the skills of forestry, an expansion in knowledge of water resource development, of game management and conservation, extensive increases in the State's land holdings and the advent of mass public travel to sites of outdoor recreation." All this requires that at this time in 1967 we should reexamine under the conditions of our time, under the conditions that confront us and will confront us and our children in the future, the maximum utilization of these vital and valuable natural resources.

These changes suggest a fundamental need to re-examine and re-think how we will manage our public resources. The trustees, the Governor, the Attorney General, the Comptroller, the temporary President of the Senate, the Speaker of the Assembly, the Chief Judge, the Conservation Commissioner, you may be sure, will safely keep the forest for the people, and my proposal, although it con-

tinues the term "Wild forest land" broadens this concept out. After all, "wild forest land" is what the Constitution says it is. It may include development for recreational use and sound conservation management.

At the foot of Lexington Avenue in New York City, between 20th and 22nd Street, is a park—Gramercy Park. It is surrounded by a high iron fence which is locked on each end, but only a few people have keys to this park and can use it. The rest of the people go by and look in through the fence and are unable to gain admission. I have been told that there are good legal reasons for this, but the fact is that people are kept out of a park in the heart of the City of New York.

Now, this iron fence and these keys and the exclusion of a vast majority of the people seem to me to be symbolic of the effect upon the forest preserve in the Adirondack and Catskill regions of this tight and prohibiting Constitutional provision. Unless you have the stamina of a mountain goat, or unless you have been used to mountain climbing or long trails, it is impossible for you to get into and have access to the most beautiful and the most desirable part of the Adirondack forest preserve. The public roads go all around it. Access into the direct areas of the MacIntyres and Mt. Marcy is available only by trail. It is all right for people who have the physical stamina to use the trail and get in there, but most of the citizens of New York can't use them and they are as effectively barred out of the adequate utilization of the natural resources of the State as though they stood outside Gramercy Park looking in through the fence.

The delegates to the 1894 Convention were trying to save timber from being wasted; they were concerned with timber preservation; and they surely didn't foresee the enormous growth of recreational facilities and recreational needs as we became a more mobile people and as we moved more readily from one place to another.

This Convention, I submit to you, owes it to the people of New York who own this land, who have the title to it, to make it possible for them to use it in our times to relax and eliminate these restrictions which effectively bar people in large numbers. I know it will be said that there are many thousands of people who use the forest preserve as it is, but they are an infinitely small proportion in relation to the whole population of New York. My amendment would permit the development of roads through the central part of the Adirondacks. It would permit the development of ski trails and ski facilities, it would permit the development of camps and campsites and State-owned hostelries where people could come and rest and be recreated.

We have in the Adirondacks the MacIntyre Mountain range, one of the finest natural ski areas in the northeastern part of the United States. It has consistent snow, it has altitude, it has everything but accessibility. It is better, I am told by the ski people, than anything in Vermont, yet hundreds of thousands of people go from New York into Vermont to use the ski facilities of that State, while we have in our own title, in our own possession but undeveloped because we can't get to it, and undeveloped because we can't cut down a single tree, this great natural facility which is unused and neglected.

Now, if this were good conservation, something might be said for trees against people, but it isn't even good conservation. It is about the poorest conceivable way you could manage a public forest because everyone knows that a forest ought to be harvested, thinned out to permit new growth to have a chance. The underbrush should be cleaned out and adequate fire protection ought to be established by fire breaks. There are conservationists who say that given the right conditions of wind and drought over long periods, without adequate fire breaks in the Adirondacks and Catskills, we could have a catastrophic fire. That result we should at all costs avoid.

I want to read a line of what a noted conservationist said about the management of our present forest preserve. Dr. Harvey L. Shirley, dean of the State

University College of Forestry of Syracuse University, has concluded after years of observation of our present policy that it is "wasteful of land, water, timber and wildlife resources." If on one hand we are keeping the people out because of a narrow policy and on the other hand we are not doing any good for the forest, it seems pretty clear that a small fanatical group, very skillful in propaganda, but still a fanatical group, ought not be able to keep the people of New York out of their own forest. I submit we should open it up to them.

MR. STOCKMEISTER: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President and Ladies and Gentlemen and Fellow Delegates: When Judge Bergan first offered this proposal he told this Convention early in the session it was merely to provide fire protection for the forest preserve. He said it was needed so that firebreaks or more fire access roads could be built. Mr. President, this argument simply is without foundation in fact. Our Court of Appeals ruled in the famous McDonald case that all things necessary for forest fire protection may be done under our present Constitution. We have fire truck trails throughout the forest preserve. We have many of them and we have them in places where our trained experts of the Conservation Department say they should be. It is true that we do not have firebreaks, but it is not because the Constitution prohibits them. We do not have them because the fire control experts report they are not practical. Our control methods are more efficient. The simple fact is, Mr. President, that the forest fire losses in the forest preserve are small. In 1965, the last year for which we have complete figures, only 159 acres of the forest preserve were burned. Think of this, 159 acres of over 2½ million acres. The heaviest burn in the past ten years during the worst drought we had in our history was only 1600 acres. Our forest preserve is being protected against fire and a change in the Constitution is not needed for this purpose.

Now, we come to the trustee plan. This amendment would set up a board of trustees to set policy for the forest preserve. Since it was first reported in the newspapers, I received dozens of letters commenting on it and every single one of them was opposed to it. I am certain that if this proposal should be submitted to the people for a vote it would be overwhelmingly defeated. The proposal contradicts itself. First it says that the forest preserve shall be forever kept as wild forest land. Yet in the very next sentence it authorizes management of these lands. Wild forest lands are not managed lands.

Do we want to make a Jones Beach or Coney Island of the Adirondacks? We have something unmatched in our forest preserve; let's keep it. There is no gate around it where only a few have keys. You said thousands. I say millions use the forest preserve every year. The proposal strikes out of the Constitution a prohibition against commercial lumbering of the preserve, it strikes out the prohibition against the sale of these lands. It gives almost complete policy-making authority over these 2½ million acres to what are probably the seven busiest men, public officials in our State. How much time could the Governor, the legislative leaders and other trustees devote to this important task?

Finally, Mr. President, let me point out that after every gubernatorial election it is possible that the entire Board of Trustees could be wiped out, and an entirely new Board, with the exception of the Chief Judge of the Court of Appeals, would be automatically installed. Where the new officials took over how much time could many of them have to devote to consideration of the basic policy decisions that would face them as trustees? This proposal should be defeated.

THE PRESIDENT: The Chair recognizes Mayor Corning.

MR. CORNING: Mr. President, I feel somewhat reluctant to disagree as emphatically as I do with my colleague, Judge Bergan, and if it were on a legal

matter, I would feel that I would be presumptuous to do so. On the other hand, I do feel that I know at least as much about the Adirondaeks as does he, and I think I know that the people of this State feel that they understand the meaning of Forever Wild. When he says in his amendment that the forest shall remain as wild forest lands, I think that is what they mean and not that the Adirondaeks and the Catskills can be criss-crossed at will by high-speed roads, have ski trails running wherever there is enough snow, and have recreational facilities—and the Lord alone knows what kind of recreational facilities are meant by this language. When he says that that is what he means by Forever Wild, it isn't what I mean by Forever Wild and I don't think it is what the people of the State of New York mean by Forever Wild. I don't think that they want the Adirondaeks managed meticulously as a forest. I don't think they want the best game management. I don't think they want it full of recreation. I do think that the people of the State of New York want to see this greatest of all State parks maintained as it has been for over 70 years as Forever Wild forest lands, and I hope that this amendment does not prevail.

THE PRESIDENT: The Chair recognizes Senator Pomeroy.

MR. POMEROY: Mr. Speaker and Ladies and Gentlemen of this Convention: I would like to make sure that all of us here understand fully about the forest preserve because we have to decide it here as a group and we want to know what we are talking about specifically when we do, and we want the forest preserve in perspective.

Let me ask you to look first at this outdoor recreation map which is on the desks of many of you. The point I want to make here is that the forest preserve is but a small part of the whole outdoor recreation complex in New York State. We in New York State have a great advantage in this. The forest preserve—

MR. BRYDGES: Mr. President, I notice many of the members do not have copies of the maps.

THE PRESIDENT: Maybe you can borrow Judge Desmond's or Mr. Duryea's. There are enough around, I am sure, to spread them over two desks.

MR. POMEROY: I believe there were not enough for everybody, so they will have to be spread over the desks.

THE PRESIDENT: Go right ahead, Senator.

MR. POMEROY: New York State has this wonderful water complex, the Great Lakes, the Finger Lakes, Lake George, Lake Champlain and countless other lakes, it has the Genesee River, it has the Susquehanna River, it has the Delaware River, the Mohawk and Hudson Rivers and thousands of little lakes, all usable for public recreation. It has State parks. There are over 100 State parks at the present time, and there is another folder that indicates what can be done in those State parks. There are cabins, swimming, picnicking, a variety of recreation. It has, outside of the forest preserve and outside of the Adirondaek and Catskill Parks, 700,000 acres of reforestation and recreation land upon which any normal recreation suitable to that land may be engaged in. It has boat launching sites. If you look on the reverse side of your map you will see the boat launching sites, the other waterways that are available, and a list of the State campsites and all the outdoor recreational facilities which we in New York State enjoy. Now, the forest preserve is but a part of this, and I want to compliment Mr. Stockmeister on his bill, 1825-B, which I think is a very excellent bill. I think there are minor improvements which can be made and those will be suggested later, but I want to compliment him on that, and I also want to point out this forest preserve. I want it distinguished clearly just what the forest preserve is and what we mean when we talk of the Adirondaek and Catskill Parks. There are 16 forest preserve counties, 12 in the Adirondaeks and 4 in

the Catskills. The Constitution says that all the land now owned or hereafter owned in all these counties—and this is true with small exceptions—is forest preserve land. In 1892 it was first intended that protection in the Adirondacks and in the Catskills would only be for land acquired by the State. This turned out to be impractical, but for the last quite a few years, State policy has been to acquire this land within these so-called Adirondack State Parks. The boundaries are designated by the Blue Line, hence the name Blue Line, but please recognize that these are not parks in the strict sense of the word. The ownership pattern of State land and private land is in the patchwork pattern, 60% approximately private land and 40% State land. So this is to give you a little better understanding of when we talk of the forest preserve land, which is all the land now owned in these forest preserve counties and the Adirondack State Park, which are not parks in the true sense of the word. They are not parks like these other 100 plus State parks: the Alleghany State Park, which is 50,000 acres and Letchworth Park and the Thousand Island Park and things like that.

Now, I also want to reiterate what Mr. Stockmeister stated before, that this forest preserve does furnish the only wilderness type area east of the Mississippi River, with the exception of the relatively small Baxter State Park in Maine; the only place where people can go for hunting, fishing, hiking, and camping, in natural surroundings in a great deal of this area. Not all, of course. No other state has this, no other state can have this because New York State, in the wisdom of the people in 1894, decided that we were going to keep this last vestige of remaining wilderness. So that is what we are talking about when we talk about the forest preserve.

Now, as to the uses in the forest preserve, Mr. Stockmeister is quite right, it is used by millions of people. 2 and  $\frac{3}{4}$  million man days alone used the public State campsites which are in the forest preserve, of which about 49 of them are right in the Adirondack and the Catskill Parks. Fifteen thousand people in one year have registered at one of the Ranger cabins on the 900 miles of trails throughout these forest preserve areas. There are nearly 300 lean-tos. There are these boat launching sites next to the highways that intersperse the Adirondacks and the Catskills so that people, particularly in the Adirondacks, can use these boats and use the waters to great advantage. That is what we are talking about when we talk about the forest preserve; something that is unique, something that is used, as Mr. Stockmeister says, by millions of people and something that is unique because in all the eastern United States, New York State is the only one with this valuable asset, and I trust that this amendment will be defeated.

THE PRESIDENT: The Chair recognizes Mr. McCurn.

MR. McCURN: Mr. President, fellow delegates: I would like to take this opportunity to rise in support of Judge Bergan's amendment.

Let me say at the outset, and I'll try to keep this as brief as I can, the question here really, Mr. President and fellow delegates, is whether or not we are going to take action to preserve or to conserve.

Now, I don't know the experience of a great many of you, the majority of you delegates, have had with the Adirondack Mountains or Catskill Mountains, but my experience has been primarily with the Adirondacks. Although I come from primarily a metropolitan area, I have spent most of my forty-one summers in the Adirondacks, except for the time I spent in service, and I have some acquaintanceship with it and I think I might have something to offer those of you who are not familiar with the Forest Preserve, some information concerning the same, so that I rise to talk for a moment or two.

The question arises in my mind in considering this as to just who is for maintaining the present stringent restrictions of forever wild and who is against in connection with this debate and in connection with the hearings which we have had before.

I know we have been told that over 80% of those who attended the hearings held by Mr. Stockmeister's committee were in favor of retaining the present stringent provisions. I think an examination of those that appeared would reveal this group represent a very minute portion of the population of New York State. I think this is too bad, probably, because I don't think the people in the city—and I am referring to the New York area—are really aware of what is involved here. And I would like to acquaint you just a little bit with that.

Some of the groups that have contacted me—and some others may have contacted you—but I want to tell you who contacted me, for and against. Those in favor of maintaining the present stringent restrictions are the Women's City Club of New York, the National Geographic Magazine from Washington, D.C., the Adirondack Mountain Club, which is based out of Schenectady, New York and which I understand has a largely non-upstate Adirondack membership, the Wilderness Society from Washington, D.C., the Citizens Union, the Constitutional Council for the Forest Preserve from New York City, and the Sierra Mountain Club, the members of whom I am not familiar with, other than I know Mr. Levitt is a prominent member of it.

On the other hand, the groups that have contacted me, and I assume you, in opposition to the present stringent restrictions are the Adirondack Park Association, which represents the twelve counties within the blue line, the people whose neighborhood territory we are dealing with; the Adirondack Slope Travelers Association, the State University College of Forestry at Syracuse, New York, whose business it is to preserve our forest, the Warren County Conservation Council, which lies within the blue line, and in addition to that Chancellor Tolley of Syracuse University, who for years has been an advocate of preserving our forests, and last but not least, I think, if you read through the material that was presented to you, you would see that the New York State Department of Conservation is in favor of loosening up these restrictions.

I would ask you to compare whether or not these groups which I have mentioned last should bear the same credance as—and I am not criticizing—the Women's Club of New York and the Wilderness Society of Washington when we start considering what we ought to do with our forest preserve.

The purposes of this article in our Constitution are obvious. First, to preserve our forest. Are we going to preserve our forest by maintaining the present limitations which are in our Constitution? I think anybody who knows anything about conservation would give that an emphatic no. We aren't preserving the forest and wilderness the way we are going now. You can't preserve a forest by allowing it to go on and grow one tree on top of another, or a primeval forest, as they call it. The only way to preserve it is to cut it and have second and third growth timber in there, and if you are going to continue the present type of forest management which we have in the Adirondacks, you aren't going to have a wilderness very long, you are not even going to have the pleasure of knowing that inside these areas which you can't reach and can't see there is a forest, but rather a mass of tangled lumber and an inaccessible area which is of no benefit to anybody.

Another argument that I know will be made by the forever wild stringent regulation people is that this provides a game refuge. Quite to the contrary. What happened is that the wild game has not had a refuge and the game in New York State in the wilderness areas has had to abandon it because of the fact, when you have these primeval forests, the growth at the base of the trees gets so heavy that our game has had to leave the forest. Where are they going? They are going to the private forest preserves, and the private forest preserves, I submit to you, are the groups that have appeared before you and are trying to get you to keep the present restrictions in the Constitution. No wonder they want it, because all the deer and all the game are coming off the State lands onto their lands, and I think in that connection also it is interesting to note that in these private forest preserves which you haven't heard of, but which I will

guarantee you are there, they constitute thousands and hundreds of thousands of acres of our State Park land. In those forest preserves these people practice the very thing that they are asking you to provide against, they practice forest management. They cut trees in order to allow growth. They provide for insecticides. They provide for treatment by professional foresters, and the very things that they ask you to prevent the State from doing are what they practice in their own private forest preserves. There are many arguments, other arguments, that are made in favor of those who would defeat Judge Bergan's amendment. Some of those are, for instance, that the highway access now to the forest preserves is adequate, that you don't have any trouble getting in there. Well, that I might say is not so. If any of you have driven up into that area within the last two years you will find it is practically impossible to get in there, and if you want to take your family or take a trailer and go up in the Adirondack area for a weekend, you are faced with clogged highways backed up for miles, and this is a result of the State Department of Public Works not expanding their highway system, and they cannot provide for any highways or access to these areas because of the Constitutional restrictions.

It is pointed out, also, we presently have camping sites in the wilderness areas and these are available to the citizens of the State. I think it goes without saying that these campsites that are there now are unconstitutional because they are in violation of the law. The way they put them in, the way they justify them, is on an opinion of the Attorney General that by providing campsites they are, in effect, eliminating the danger of forest fires, because you put the citizens who will go into the forest in one small group instead of dispersing them around.

In regard to access, if you have driven up Route 28 which lies between Old Forge and Alder Creek—it is the only road through the central Adirondacks—if you want to go in the central Adirondacks you have to go on that road. You can go north on that road for forty or fifty miles and not see another road.

I heard the remark that this is access within three miles to all the wilderness areas. This is access if you have a five-shift drive truck and a winch on the back of it, because otherwise you will never get in there, and nobody, I submit, can go in and enjoy these forests because there is no means of getting in or out.

Some of the other arguments that are made is that the forest management will destroy our forests, and I can't really think of anything more ridiculous than that. If we have got a State College of Forestry and if it is the policy of the State of New York to provide for education of people who will be professional and take care of forests, and if they advocate forest management, and if forest management is going to lead to destruction of forests, then I propose to you we must be doing it the wrong way or something must be wrong.

I think basically it boils down to this, whether or not we want to keep the restrictions we have in here dating back to 1894, which as Judge Bergan stated to you, were put in under entirely different circumstances, back at a time in 1894 when there wasn't one professional forester or biologist or game expert in the whole country. If we want to keep those days in effect in New York State, we ought to defeat Judge Bergan's amendment. If, on the other hand, we are serious about the idea of bringing the Constitution up to date, and if we are serious about conserving our forests, and if we are serious about giving the citizens of this state, all of the citizens, not just the privileged few, the right to use what is theirs, the lands of the State of New York, then I submit we should support Judge Bergan's amendment.

THE PRESIDENT: The Chair recognizes Judge Hunt.

MR. HUNT: Mr. President, at this time I would like to rise and support the amendment proposed by Judge Bergan.

I am very much impressed with everyone telling us that we the people own the forest preserve, but then in the same breath they continue at length and say,

we the people can't use the forest lands. They all tell us, we own it, but we can't use it except for a privileged few. Those are the strict conservationists.

In Europe there are many forests which have been managed for centuries.

There is no doubt that the forest in this state could be managed under the capable guidance of the Board of Trustees Judge Bergan has proposed.

Thousands of people use the state parks along the lakes and that is only an indication of the people who would use our great forest preserves if they were open to we, the people.

We, the people, are we here in this chamber. We, the people, are those who live throughout the state of New York.

We, the people, does not mean this stone and brick building. We, the people, means us, and we, the owners, have the right to use the forest under proper management, and I think that Judge Bergan's amendment should be adopted.

THE PRESIDENT: The Chair recognizes Mr. Levitt.

MR. LEVITT: I came to Albany with the task of what I thought was writing a fairly modern and progressive constitution. Now I urge your attention to the ever wild restrictions and the adoption of proposition 1285-B, because I firmly believe that this is a progressive motion, that it insures a permanent degree of flexibility in our land use, that it benefits the present and that it provides for the future far more than it preserves the past.

I think we might do well to recall the words of John Ruskin: "God has lent us the earth for life. It is a great entail. It belongs as much to those who are to come after us as to us, and we have no right by anything we do or by neglect to involve them in any unnecessary penalties or to deprive them of the benefit which was in our power to bequeath."

In this day of motorized transportation, the car, the airplane, and new high speed roads, we have made the state-owned forest preserve lands in the Adirondacks and Catskill region readily accessible.

The arguments I have heard today that the lands are inaccessible, that the region is locked up, simply is no longer true. As a matter of fact the real danger today is that we are inviting a degree of intensive use that the area cannot absorb.

I have on my desk this morning two letters from Adirondack residents, both from Loon Lake, New York, alarmed at the prospect of the commercial exploitation of vast tracks of land by real estate developers who intend to build a "new city" within the Adirondack State Park.

The danger that we delegates face here today does not lie in opening up the lands to more people. This all of us seek to encourage, but rather in exploiting the lands, in developing them without regard to their wilderness character, our valuable natural resources, or the purpose of the forest preserve.

Haphazard and careless exploitation of privately owned lands will affect and upset neighboring lands, some of which are likely to be state owned.

We in New York are fortunate that our ancestors had the foresight to set aside certain areas, to prohibit the commercialization of these areas and to mandate that these be kept as wild forest lands.

How does it happen that an old state like New York was not thoroughly butchered and kept so as were Michigan, Wisconsin, Minnesota and now even some of the Pacific Coast states. How is it New York boasts a truly unique forest preserve? The answer in true fact is that New York was not saved, only one hundred thousand remote acres due to the inaccessibility are really undisturbed by man.

A good portion of our original forest preserve lands were destroyed by fire. Much state-owned land was practically given away, some at the ridiculously low price of four cents an acre, and then plundered and ravaged by private interests. But other wild lands, because they were protected by Article Fourteen for the

past 70 years, have made a valiant comeback. Article Fourteen renewed them by removing them from constant hacking and irreversible damage.

It is argued that we knew little or nothing of scientific forestry when Article Fourteen was adopted, and this I admit. It is further argued we should entrust our forest lands to a trusteeship with perhaps its knowledge of scientific forestry gained in wildlife management and general management of the laws of nature. Is this the proper supervisory organ for protecting our forest lands? This I do not admit. If we permit Judge Bergan's trusteeship to engage in forestry management, estimates as to the numbers of trees that would have to cut range from 300 up to 500 trees per acre. Although multiple use may sound like an attractive approach for some forest areas, our purpose in creating a forest preserve and in mandating our state-owned lands shall be kept forever wild is to insure that we shall have a wilderness area, and it is unrealistic to think in terms of a managed wilderness or a trustee wilderness. There simply is no such animal. The two words are a contradiction. The trusteeship is not consistent with the preservation of lands in its natural state.

Now, the vast extent of the rational use made of the forest preserve is realized by very few people. I have found that hunters, for instance, have very little concept of the number of mountain climbers and vice versa. The same applies to skiers and fishermen. Nor do the summer cottages appreciate the great numbers who drive into the mountains in late September or October to enjoy the autumn colors. Very few know that for every fourteen individuals who hunt with a gun there are eleven who hunt with cameras or binoculars according to the 1965 census.

In 1966, over 1,200,000 individuals used the public campsites maintained by the Conservation Department. In addition, 48,602 people camped or picnicked on the Lake George islands, and at two of the four winter sports centers of the forest preserve over 180,000 people were tallied.

Sometime ago, I made a study of the number of people who climb mountains in the Adirondacks and Catskills in a single year. At that time, about 1950, the study indicated a total of 180,000. Last week, I reworked the figures on the basis of the 1966 report, and indications are that over a half-million different individuals climbed these mountains in 1966, an increase of over 18,000 per year.

There are well-meaning persons today who believe that in the process of shortening and streamlining our State Constitution, the fate of the forest preserves should be left in the hands of the Legislature. These individuals obviously are not familiar with the legislative and voter action on forest preserve questions during the past 82 years. For example, and I think this is significant, in 1885 a law which provided these state-lands shall be forever kept as wild forest lands was passed to stop the forest devastation to these critical watershed forests. It was soon found that state law was too easy to change. For instance, in 1893, authority was granted the Forest Commission to sell or exchange land in the interest of consolidation and to sell certain sizes of some timber species. A later State publication stated this was the last straw in killing public trust in the administration of the forest. As a result, Article Seven, section 7, now known as Article Fourteen, section 1, was placed in the Constitution.

Of course the Constitution cannot be changed without the consent of two separately elected Legislatures and the people. How important this is can be illustrated by taking a quick look at some of the changes passed by the Legislature and repudiated by the people.

I think the essentials of this argument comes in the notion of change, because if we permit this change to take place at the present time it will be absolutely irreversible. We cannot undo the damage, we cannot undo the change, we cannot undo the roads built through the preserve.

In my judgment no more progressive article or motion will come before this body than the one here, Mr. President.

In closing I would like to repeat something that Sharon Mauhs, who was a former Conservation Commissioner had to say. He asked "What is the forest preserve?" And he answered—and I agree with him—"It is one of the great natural resources. It is a whole complex of nature, trees and rocks, ferns and flowers and wild life. It is clear water and clear air. It is the beauty of nature as nature evolves. It is the solitude and music of stillness. It invites man to adventure, to refreshment and to wonder. It is the will of the people of this State as expressed in their Constitution, and I hope to keep it so."

THE PRESIDENT: Mr. Clark.

MR. CLARK: Mr. President, I have the honor of being one of the delegates of the 42nd Senatorial District which includes in their entirety Franklin, Clinton, Essex, Hamilton, Warren, Washington and Herkimer Counties, 26% of the area of the State of New York, and an area which comprises a major portion of the forest preserve and the Adirondack Park.

I live in the Adirondaeks the year round. I have no quarrel with the original Forest Preserve Act and we have no quarrel with the 1894 Constitutional Convention which gave constitutional protection to the forest preserve. Admittedly it was needed. Admittedly there were abuses. The lumber barons at that time obviously were unaware of the science of forest management.

I am informed that there were no trained foresters in the State of New York in 1894.

I think before we go any further it is important to learn, and I don't think that any self-appointed group may appropriate to themselves the label "Conservationist" to the exclusion of all others. We have had constitutional protection for our forest preserve since 1894, and it seems to me that in a State that has pioneered in so many fields of endeavor it is particularly significant that not one single state of these 50 states of our Union have seen fit to mandate Forever Wild or constitutional protection as Forever Wild to their State parks and to the forest preserves.

The State of Alaska, which presumably had a great deal of assistance in formulating a new Constitution, has constitutionally mandated forest management.

None of us seek to destroy the forests. None of us seek to destroy their natural beauty. We simply seek an opportunity to make more use of it and to take care of them.

We appreciate that the forest preserve in the Adirondack Park has a tremendous capability, for instance, of storing water. We do not seek to change this. We would enhance this.

Vast changes have taken place since 1894. The automobile, the good roads, and particularly the Northway, the development of motorized camper trailers, motorized snow sleds, and as time goes on with more and more people with more leisure and more time for recreation and with earlier retirement and longer vacations; it seems to me that the demand for this type of recreation, which I think we all agree is a wholesome recreation, it is a family recreation, it should be encouraged.

Now, I have heard here today that the forest preserve in the Adirondack Park is used by millions of people. But these millions of people, ladies and gentlemen, congregate in the only place they can congregate, in our public campsites, and I don't see anywhere in the present Constitution or in the proposal of Mr. Stockmeister anything which would legalize these public campsites which are within the Adirondack Preserve. As a matter of fact, there is no Forever Wild in these campsites. If you have been up to some of them, as you probably know, you can't make a reservation. The present policy is first come, first served. If you get in you can stay two weeks. So what happens? A man with his family and his equipment comes up to one of these public campsites and he finds that it is full.

So he is faced with the necessity of parking his family and his equipment along the public highway and he waits and he waits until his turn comes and space is available, made possible by the departure of someone else.

And I wonder, are these public campsites in the Adirondacks actually legal?

The argument is made that we can't trust the Legislature, that we can't trust the Governor, or apparently we can't trust anybody to the blandishments of the lumber barons. It seems to me that Judge Bergan's proposal—if you accept that argument—it seems to me that Judge Bergan's proposal effectively answers that argument. It seems to me inconceivable that the persons holding that high office and who would hold the duty as trustees for the people of the State of New York could succumb to the blandishments of these lumber barons, as they are called, whoever they may be.

I also think it is particularly significant that in our national parks forest management has been practised and practised with success for over fifty years. And I also wonder, if the present constitutional statute is maintained or if we adopt Mr. Stockmeister's proposal, does this leave us with the appropriate flexibility in the event that we should have an Adirondack National Park as was reported in yesterday's New York Times.

I submit, ladies and gentlemen, that trees, like any living organism, eventually die. It seems to me that these trees, once they are marked and judged to be mature, could best be removed while there is still some utility left in them and room made for new trees and young trees to grow up and take their place.

In conclusion, it seems to me that we must have a constitution which is going to meet the growing needs and the dangers that are ahead. It seems to me that we ought to open up these forest preserves for more and more people in the spirit of health, recreation and happiness. Let us not require a constitutional amendment every time some worthwhile proposal is advanced.

As an example, a constitutional amendment to allow the Village of Saranac Lake to extend their disposal lot by ten acres in exchange for 28 acres of forest land. Nor, it seems to me, should we depend on the strained interpretations that are given by the Attorney General to further similar and desirable objectives.

Let us have the courage to look to the future with its ever changing demands, and let us present to the people a constitution designed for the future, not an inflexible do-nothing constitution.

Thank you.

THE PRESIDENT: Does any other delegate wish to be heard on this amendment?

Dr. Harrington.

MR. HARRINGTON: Mr. President, I rise to speak against Judge Bergan's amendment. It seems to me strange logic that would liken a public wilderness open to all the citizens of this state in any way to a private park in the city open only to those who own it.

Our wilderness forest areas are available to everyone on equal terms. They are asked only to keep the character of those areas as wilderness areas.

I rise to support the Stockmeister proposal to maintain them as wilderness areas. I think it is terribly important that we make a distinction between three kinds of areas, recreation areas, scientifically managed forest areas, and wilderness areas. They are different. There are areas for recreation and they can be made more adequate and more adequately available to the people. There are scientifically managed forests, and more and more of the idle farm land of this state is being put into scientifically managed forests. And then there is the precious heritage of the wilderness, which once destroyed will be gone forever, and it is this precious wilderness that we seek to maintain intact as a heritage for the future.

One hundred years ago our greatest American naturalist, Henry Thoreau, said that he saw Walden Pond as a wilderness. I wish you could see it today as

a recreation area. Walden Pond has its public beaches, its parking lots, its billboards, its hot dog stands, yes, and it even has cages of monkeys for the curious to gaze upon. And it is a wilderness no longer.

So much can be done in the name of recreation to destroy what we sometimes call improving upon nature.

I have been astonished to hear also that somehow the great trees can't get along by themselves, and wild life cannot thrive unless protected by man. In an age in which so much that is natural has been despoiled—air, water, soil—in an age in which there is so little of the real wilderness left, I say we must preserve and if possible, extend the heritage of wilderness to which our city bound people can go and understand the meaning of nature as it is when it is left alone.

The Liberal Party has for a long time stood for the maintenance of this heritage, and we will so stand again, and I urge therefore for those future generations that will need it more than we, the natural heritage be preserved and that this amendment be defeated and the Stockmeister proposition voted.

THE PRESIDENT: Mrs. Scheer.

MRS. SCHEER: Mr. President, fellow delegates, this is my maiden speech, the first time I have spoken to you—

THE PRESIDENT: A very charming lady.

MRS. SCHEER: Thank you very much. I don't know whether you are laugh at the thought of calling me a maiden. I have sat here and listened for months now to speakers, most of them excellent, but I made up my mind that I was going to wait until I really had something to say, and this matter of the forest preserve has become very important to me as a member of the Committee on Natural Resources.

Now, I am chairman of the Subcommittee on Recreation, and of course recreation is an extremely important matter for the public.

We have had four hearings of the Natural Resources Committee and I think second in importance was the matter of recreation that was brought to our attention. At each of our four hearings, we heard numbers of professionals in the field of recreation stress the need for more recreational facilities. They urged that we mandate a separate department of recreation in the executive branch. They felt it was so important they wanted their own department. They stressed the need of individual recreation. It is in the service of that need for recreation in a natural environment that we realize one of the greatest values of our forest preserve. I think I forgot to mention that I am speaking in opposition to Judge Bergan's amendment and in favor of Mr. Stockmeister's proposition 1285-B.

The fact is that more and more, with each passing day, the pressures of our urban life increase. More and more we live in and are dominated by artificiality. More and more we need to spend some part of our time in the natural world.

The opening sentences of Section one of Article Fourteen constitute the Magna Carta of the forest preserve. They were adopted by vote of the people in 1894 and have been reaffirmed from time to time since then: "The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."

In a report submitted at a hearing of our committee on May 25th, David L. Newhouse, Chairman of the Constitutional Council for the Forest Preserve stated: "The important uses of the preserve include protection of vital watersheds, forest recreation, wildlife habitat and scenic enjoyment, none of which by their character conflict with the Preserves wild forest character. The Preserve is within a day's drive for 30,000,000 people and it is used each year by hundreds of thousands of hikers, campers, snowshoers, skiers, hunters and fisherman. The

wild forest setting it provides lends savor to use by all. The construction of facilities such as trails and lean-tos facilitate access to interior regions, while campsites and picnic area in peripheral areas serve the automobile camper and as a base for enjoyment of adjacent regions. The preserve offers opportunity for study by scientists and amateurs alike of natural subjects in a natural environment, untouched by the pressures of civilization. It offers a large scale demonstration of the checks and balances of nature.

The easy accessibility of the forest preserve for use by the public is one of its most remarkable features and is widely misunderstood. A report on Forest Preserve Accessibility in the 1963 report of the Joint Legislative Committee on Natural Resources states that 38 percent of the Adirondaek Forest Preserve was within one mile of a public road or waterway, and 82 percent is within three miles.

"The protection of watersheds becomes even more important with the increasing need of our growing population for potable water. Nearly 80 percent of the Catskill Preserve lies in the New York City watershed and serves metropolitian needs directly. The Adirondaek Preserve is the source of a number of important rivers. By its very nature it helps to regulate their flow, and serves all who depend upon them for water supplies.

"We most earnestly believe that continued protection of the Forest Preserve as wild forest lands is essential to keep intact all possible watershed, recreational and scenic values, and that in the preservation of these values, the public interest will be best served both for present and future generations."

The task which the Convention faces in any revision or simplification of Article XIV is difficult and delicate because this article has been the subject of so much study, deliberation and debate; and because it is the basis of so much interpretation as mentioned before.

We should ask of any proposed change: Is it necessary? Does it diminish in any way the proteections now accorded the Preserve? Are the benefits which it offers in proportion to the risks and dangers invited by any revised structure or wording and resultant reinterpretation?

The forest preserve is the most accessible of all lands in the United States. Nowhere are lands more accessible. In a world of posted signs, of don't walk on the grass warnings, of no loitering, no fishing, no swimming, no everything commands, the forest preserve is the last frontier of freedom. There you can go, to walk, to fish, to hunt, to swim, to sit, to paint, to camp, to do anything not forbidden by the penal code. Nowhere else in the United States is there such freedom, such accessibility.

To some of the places you cannot drive an automobile, of course. To some you must walk, although there are great and widespread myths about how many such places there are and how far they are. As far as a matter of walking is concerned, I understand that there are many people who go to the foot of the hill of the Capitol and take a taxi up, so there are many people who don't walk right here on Washington Avenue.

In its 1963 Annual Report, the Joint Legislative Committee on Natural Resources, after extensive study and deliberation of the numerous problems concerning the Forest Preserve, recommended the following policy relative to its administration:

1. That the principal uses of the Forest Preserve, each of utmost importance, be regarded as watershed protection and public outdoor recreation of a type that is consistent with the preservation of natural conditions.
2. That the preservation of its natural conditions under the constitutional protection of Article XIV be continued as fundamental policy.
3. That the further construction of foot trails, lean-tos and public campsites be encouraged as need develops, but that such facilities as campsites and picnic areas be located outside of any defined wilderness areas such as those recommended in the 1961 report of the Joint Legislative Committee on Natural Resources.

4. That the Conservation Department take such action as may be necessary to regulate or, if necessary, prohibit the use of motorized equipment wherever the wilderness character of the Forest Preserve is threatened thereby.

5. That continuing studies of wildlife habitat improvement be conducted by the Conservation Department and that appropriate action, consistent with the Constitution, be encouraged to preserve and enhance our wildlife resources.

The natural resources of our State and Country are being depleted constantly. We should bear in mind that once removed they can never be replaced—they are irreparably gone. Let us remember that the Forest Preserve was bequeathed to all generations—to eternity—not just the generations up to the present one.

It would be a tragic irony if this 1967 Constitutional Convention weakened the protection of our forest preserve from that provided by our predecessors of 1894. As a convention called to modernize a constitution we must not undo a policy which grows more modern each passing day.

Proposition 1285-B maintains Article XIV's full protection. It shortens and simplifies the language. Let us not be remembered as the convention which weakened that protection.

(Applause)

THE PRESIDENT: On the amendment, Judge Scileppi.

MR. SCILEPPI: Mr. President and fellow delegates: I rise to differ with my distinguished colleague of the Court of Appeals, Judge Bergan, and will indicate that I shall vote against the amendment for several reasons. First of all, I find no compelling reason for a change in this Article. I don't know what the experience of other delegates has been. As far as I am concerned, I have received no deluge of letters asking that this Article be changed. It seems to me that we talk about what the taxpayers want, what the people of the State of New York want and we have a definite record as to what they want. Back in 1897, it was proposed to weaken the wilderness protection under this Article and it was defeated by the people of this state, 710,000 to 321,000. Now, in 1923, an amendment authorizing water power development in the Forest Preserve was defeated by a vote of 965,000 to 470,000. Then in 1931, an amendment to permit development of forest preserve land for recreational purposes was defeated 1,326,000 to 693,000. Delegates of this Convention, as Al Smith of happy memory, who sat in this Chamber, used to say, "Let's look at the record," and that's the record of what people of this state want. At least, that is what they wanted. The burden of proof being on those who want to make the change, I say that they have failed to present any substantial convincing reasons why this article should be taken out of the Constitution. I say to you, as has been said here before, you know, we can bring bulldozers into this area, we can fell trees and shrubs and wildlife affected by the felling of these trees, but as has been said often, and I repeat, only God can make a tree, and we can't possibly restore these trees after they are destroyed.

I think it is the duty of this Convention to preserve this Article for the benefit of the people of the State of New York today, but as has been said, the people of the State in future generations, and I shall vote against the Stockmeister resolution.

THE PRESIDENT: The Chair recognizes Mr. Bartlett.

MR. BARTLETT: I want to support Judge Bergan's amendment and since it may not be the popular thing to do this afternoon, I suggest we ought to take a good look at the asset we are talking about.

We have before us a map which delineates in green at the upper right-hand corner of that map the forest preserve as it exists in the Adirondacks. Down a little bit lower much smaller holdings in the Catskills. Just look at this map, ladies and gentlemen. Is this a solid block of the wilderness? Of course not. As

Mr. Pomeroy himself said, it's a patchwork quilt and yet we here today are talking about imposing upon that patchwork quilt a single inflexible standard for its management for the benefit of those who own it, the people of the State of New York. The Pomeroy committee has done excellent work in studying this problem and describing it to the people of the State and they found in this Preserve a dozen areas of 10,000 acres or more which they said deserved wilderness treatment. I agree with them.

Ladies and gentlemen, this is a small part of the overall Preserve, less than a third I am told, and yet today when Judge Bergan offers a reasonable alternative to this inflexibility we are told that he is going to destroy this asset for the people. I suggest that that is not so at all. As varied as is the asset, so must be the policies applied in administering that asset.

Reference has been made here to the number of people now using the Preserve. Let me tell you that out of the people who like outdoor recreation, who like the trees and the woods and wilderness and park areas, a pitiful handful really use the Forest Preserve.

A lot of figures have been mentioned and I have heard it go as high as half a million. I challenge that figure for those who get into the interior of the Preserve. I'm sure that is not so. I heard it mentioned by an official of the Conservation Department that three-tenths of one per cent of our population, three people out of a thousand, are hikers and they are the people, ladies and gentlemen, who want to use this Preserve in precisely its present form. They are the people from whom you have heard. You asked, and quite appropriately so, "Why haven't we heard from the rest of the people in this State, the other 997 out of every thousand." I believe we haven't heard from them because they don't know what this asset of theirs is. Mention was made that the islands in Lake George are part of the Preserve and it's true, they are part of the Preserve. Do we compare those in character to the high peak area of the Mt. Marcy area? Of course not. Yet our Constitution, most unreasonably and most inflexibly applies precisely the same inflexible management for those areas of the State as for the high peak areas.

I say the Bergan proposal, the Bergan amendment, speaks for a multiple use of this asset and that is as it should be. The same Resources Committee, which has been quoted here a number of times, in its most recent report—excuse me, not its most recent—in its report a year ago suggested that there should be three different kinds of use for the Preserve—wilderness, those parts of the Preserve that could be called wilderness should really be locked up; those parts which are abutting on traveled public roads should be used for intensive recreation; and the bulk of the preserve should be used in a multiple use fashion so that we can get the maximum benefit from it for all of the people of the State. This would be permitted under Judge Bergan's proposal and I suggest that the kind of flexibility it would permit is not unreasonable.

First of all, the trustee concept, seven, I believe, six of whom are the top elected officials of the State, plus the Conservation Commissioner, would set the policy for this Preserve. Without any limitation at all? Of course not, because you will note that when the powers are delineated in the last sentence it says "When authorized by the Legislature." This doesn't mean that these seven trustees could willy-nilly adopt any pattern of management that they desire for this great asset. It means that they would have to consult with the Legislature and get authority for changes in the present rigid management policies of the Preserve. This, in my judgment, is exactly the right kind of balance we ought to have for the Preserve.

I think the greatest single difficulty we have in dealing with this subject is in visualizing just what we are talking about, what the asset is. All the white areas you see are non-publicly owned, some 2.4 million acres I am told are publicly owned within the park, forty percent I guess it is, something like that.

Even in the forty per cent, ladies and gentlemen, the holdings are not at all of uniform character. The islands in the Preserve, Dr. Harrington spoke of earlier, he has been there and went there with me a few weeks ago. There we provide docks for boats, we provide platforms for tents and we provide outhouses, which is a very essential thing out there. Is that inappropriate? Of course not. The truth is there is no such authority for this in our Constitution. This is not forever wild as many speakers here today have claimed it to be, nor indeed should it be.

For those areas in the high peak part of the Adirondacks, I think that even more stringent policies should be imposed than is now the case. I would have these trustees bar all motorized transportation in this area, including outboard motors on the lakes because that it wilderness area and should be so treated. But this is not characteristic of the vast holdings we have up there; it's a characteristic of a third or less of the total land area within the forest preserve.

We have to, before it's too late, develop a multiple use concept for this Preserve, or one day, ladies and gentlemen, the people of this State are going to wake up and find that they have been deprived of a most important asset and they are going to want to tip it all over. If we now, today, with the kind of long-range planning this amendment envisions, start out on a planned policy of providing the different kinds of recreational opportunities in this Preserve that the people of the State deserve and want, then we will be best serving coming generations. If we insist on maintaining just a firm-jaw line, a very stern look, back to 1894, exactly the kind of limitation that was appropriate in that day, we're missing a great opportunity for the future generations of this State.

It strikes me as a little curious that we are here gathered talking about change, about flexibility, about changing patterns in our population and in the needs of our people and yet when we look at this asset about which I daresay most of us have very little personal knowledge, we become terribly inflexible and our feet are firmly planted in the past. We have to look ahead and to look ahead to save this asset as it should be used is not to say that 2.4 million acres in the Adirondacks should be treated with a single policy because it's not a single asset in characteristic. We have to have the kind of flexibility this offers.

One of the most important uses of the Forest Preserve in terms of numbers today is our hunters and what do they go there for? Largely for deer and bear. What kind of deer and bear hunting do we offer there? Not very good. Let me tell you why. Because we don't manage that asset. I am not talking about wholesale cutting. Judge Scilleppi mentioned the bulldozer. The bulldozer is not appropriate for this discussion because surely the Legislature and these trustees would never envision the kind of exploitation that has been voiced here as a fear if this amendment is passed. We are talking about wild land recreation, but wild land recreation, ladies and gentlemen, means you have to get to them. It's well and good to talk about us being a people devoted to hiking and overnight bivouacs. The truth of it is that most of us aren't interested in that kind of recreation. A very, very small handful want that kind of use out of the Preserve. We need access roads into bits of the Preserve, not boulevards, just gravel roads. Have any of you been to the national forests and national parks in the west? Are they desecrated? Of course they are not. But people can get into them, they can make use of them and I say that for the bulk of this preserve we cannot get into it, we cannot make use of it.

I happen to be one of those delegates from the 42nd, as is Mr. Clark who has spent his life in the Adirondacks, and have hiked and hunted in a good deal of it. I think it's a shame that others in the State can't share this asset with those of us who live there, and have been doing it since we were kids, and get back into the mountains. Mr. Levitt, I suggest, does and he represents a small minority of those of you from the City of New York because most of you aren't interested in that kind of recreation. We need wild lands, we need wilderness, and we

also need the kind of recreational facilities that most of the people of this State want to use, not clustered along the highways, the few highways that are around the Adirondacks, not on the macadam. That's where the half-million people go. We want to get them back into their asset and get them away from the macadam and we can't do it under this present "look backward policy" of management.

There is something almost neurotic about those people, and they are a small group, who have plagued us with literature, well written, well phrased, sounding the clarion call of alarm that we are going to wipe out this forest of ours if we so much as tear down a twig. They are neurotic because they say any change at all will ruin it. Do we view our structure of government in that fashion? Do we view the relationship between state and local government in this way that any change at all will ruin the balance we have now? Of course not. Why treat this special area differently? We need a forward look in our Constitution and that will apply just as much to Article XIV and the rest of them.

I hope Judge Bergan's amendment prevails.

MR. BREWER: Mr. President. I ask consent to make a few limited remarks in support of Judge Bergan's amendment. I need not dwell at length upon it because I could never match the eloquence of Mr. Bartlett or Judge Hunt in speaking on this amendment, but I would simply say that I would earnestly request all of us here to consider well, no matter what position we take on it, consider well before we make certain statements and use certain phrases. It is not necessary to attempt to frighten us with a spectre of a bulldozer coming in there next year, nor is it necessary to say that we don't want to make a Coney Island out of these vast and natural preserves that we have. Nobody in this room, not a delegate in this room would want to see a Coney Island made out of those forest preserves. They would not want to see a Coney Island, I suspect they wouldn't want to see a Central Park, even, made out of it.

But we must remember, as has been pointed out here, that there are certain other limited uses that can be made, and this vast preserve that we have, this God-given thing, can be used by all of the people. It carries a connotation when you talk about making it a Coney Island—and I was very much impressed by Mr. Harrington's statement. If you look at Walden Pond today it will bring tears to your eyes. It is a desecration, and I am certain there isn't a delegate in this room who would even remotely agree to anything that would bring about that sort of thing in our great forest lands. But let us not use the type of connotation that we don't want Coney Island people to be able to use this sort of thing. I want the people from Coney Island, from Rockaway Beach in my county, and from anywhere else, if they want to get away, to be able to get there and be able to get into this forest, because as it is now a Stanley would have trouble hacking his way through it if he wanted to find Dr. Livingston.

Certainly I want to speak for another group of our citizens, and that is people of my age group. I would like to enjoy this thing some time but I just don't have the strength and fortitude when you reach my age to try to get through anything this wild. Now, certainly let us preserve everything that is worth preserving, but at the same time let us not keep it so wild that we keep people of the state from using it.

Thank you.

THE PRESIDENT: Mr. Levitt.

MR. LEVITT: I would like to address myself to a couple of misconceptions which I think many of us are laboring under.

THE PRESIDENT: Mr. Levitt on the amendment.

MR. LEVITT: On the amendment. The forest preserve is not a wilderness that would take a Stanley and Livingston to hack through, and I might cite a few statistics in this connection. Twenty-four per cent of the Adirondacks is

within one mile of a public road or waterway. Fifty per cent is within two miles of a public road or waterway. In the Catskills, thirty-four per cent is within one mile of the nearest public road and eighty-one per cent is within two miles of the nearest public road.

Now, the notion that the national parks are in some respects more desirable, more accessible than our state forest preserve, I think bears some attention. Now, I have waited for over six hours to get in line in front of Old Faithful to see the geyser go off. I have been turned away from Jenny Lake Lodge for a two-week period because I couldn't get in there. This is all in Yellowstone National Park. I have seen a bear and four of its cubs massacred by a truck that ran over them in the park. I think the kind of crowds and the kind of carnage and the kinds of abuse that you see in some of the national parks is not particularly enviable, and I think the way our forest preserve is maintained and protected and used by citizens from Brooklyn and the Bronx and Ausable Chasm and from all over the state is commendable. I think we mentioned a few minutes ago that of the membership of the Adirondack Mountain Club, nearly thirty per cent of that membership of that club comes from below Peekskill, New York. Conservation is something that does not pertain to upstate New York, it pertains to all of New York and it pertains to Brooklyn Heights and Kings County people as much as it pertains to people in Hamilton County.

Now, the forest preserve is but only one part of New York State's public outdoor recreation, publicly-owned outdoor recreation system. There aren't any constitutional restrictions on the use of eighty-eight state parks or five hundred and eighty thousand acres of reforestation areas or hundreds of miles of canals and waterways. We are not talking about some isolated instance of abuse, here, of locked doors. There is a lot of latitude within the forest preserve itself. There are public campsites, there are eight hundred and forty miles of public trails and lean-tos; there are boat launching sites; there are various kinds of fish and game management, and with the exception of extensive tree cutting for purposes of deer management, all of these things are available. So I am not at all persuaded by this notion of a very isolated, a very special forest preserve. The forest preserve is available to your neighbors in Queens as well as it is to mine in Manhattan.

MR. BERRY: Mr. President.

THE PRESIDENT: Mr. Berry.

MR. BERRY: Mr. President and Fellow Delegates: You have heard a lot of testimony about the accessibility of the Adirondacks. I would just add one word to that. The head waters of the Hudson River and Lake Henderson are now five and a half hours from Times Square by the Northway and the improved Route 28 North. On any good summer day from there you will see along the trails which radiate, some to the float line, some to Indian Pass, some around Lake Henderson, some up to the peak of Mt. Marcy, the highest peak in our State, or to Mt. Colden, you will see troops of scouts, of school children and people from all over the State going back and forth along these trails. I must oppose Judge Bergan's motion because in my opinion the effect of this amendment to build roads into these forest preserves, which have hitherto been serviced by trails, to establish recreation centers with all the concessions that go with them, would entirely change the character of this entire area which the conservationists have fought for 70 years to establish and protect. I must oppose the amendment on that ground.

THE PRESIDENT: The Chair recognizes Mr. Howard.

MR. HOWARD: Mr. President and Fellow Delegates: I rise to support the Stockmeister proposal.

THE PRESIDENT: We are discussing the amendment of Judge Bergan.

MR. HOWARD: Well, I will talk then in opposition to Justice Bergan.

In case it escaped your notice, I think you should know about it now. Reminiscent of Lewis and Clark, Chairman Stockmeister organized an expedition which penetrated a full mile into the forest preserve. Now, to me it seems like an awful waste of 2½ million acres if someone like Mr. Stockmeister can only penetrate that far, but I am hoping that later generations will be more rugged. Nevertheless, I wish to commend him for creating a new dimension for committee study and for mounting probably the greatest news breakthrough since our junior United States Senator scaled Mt. Kennedy.

Now, speaking more seriously, I got the impression from listening to some of you that you don't know very much of what you are talking about, you have never experienced this type of camping and you do better in talking about it. But for myself, for 25 years or more I spent every summer camping in the wilds of Canada, and I am amused when you talk about bulldozers and hacking your way through and all the rest of it. Sure I hacked my way through sometimes and broke new trails and I will tell you it is a great and glorious experience, and I hate to think that future generations are not going to have the chance that I had to do it.

Now, in this area that I went through, in this 25 years I have watched it deteriorate. Nobody intended that it should, but it is like erosion. The people come in more and more and then the first thing you know there are motor boats and there are airplanes and one thing leads to another. Presently, what we know as the solitude and the wilderness is absolutely gone. Now, don't get me wrong, I like Coney Island, but I also like my wilderness—solitude. The thing is that there will always be a lot of Coney Islands, and my fear is that there may not always be the wilderness—wild in the solitude. I hope the time will never come when there will be no small areas that are Forever Wild, and it will happen, as I have seen it happen, if we don't make sure that it can't, now. Thank you.

THE PRESIDENT: The Chair recognizes Mr. Fastenberg.

MR. FASTENBERG: Mr. President, I must confess that unlike Delegate Howe, my most recent contacts with the forest preserve occur when I go to sleep at night and I dream of the forest primeval, the murmuring pines and hemlocks, where the perch and the pickerel abound, and where the bears and deer are waiting to be taken. But I would think that it is our duty to preserve this natural heritage of our undiminished, and if only three out of a thousand hunters go to the forest preserve, that is not the fault of the forest preserve. If the mountain won't come to Mohammed, Mohammed will have to go to the mountain, and I would think, Mr. Brewer, that if you don't go to the forest preserve, it is not the fault of the forest preserve, but you can go there. This is our natural heritage which must be maintained undiminished and I would think, therefore, that I would vote against Judge Bergan's amendment.

MR. DENNEHY: Mr. President.

THE PRESIDENT: Mr. Dennehy.

MR. DENNEHY: I have heard much said about the forest preserve by experts, but I thought that I would say something about what the people say. I assume that our two political parties have some sense as to what the people want. I also assume that they make some effort to adhere to their promises.

Here is what the Republicans said in their party platform on which each of their candidates, including every Republican delegate sitting here, ran for office.

“We promise to uphold and continue the constitutional safeguards, protecting our priceless forest preserve.”

Senator Javits said the following at the end of a long statement on the forest preserve last October.

“Typical of the important sleeper issues is the retention of the forever wild provisions of Article 14 of the State Constitution which protects the forest preserve. In the forest preserve New York holds in trust for all Americans a priceless resource. As our Republican platform pledges, I propose that that trust be maintained during next year’s Constitutional Convention. I believe that it is fair to say that all our candidates for delegates at large take the position on this important matter which I have taken. The Democrats in their platform and in statements made by their leaders, including Frank O’Connor, candidate for Governor, and Robert Wagner, also pledged to protect the forest preserve.”

Mr. President, with that in mind I will vote no on the amendment.

THE PRESIDENT: The question occurs on the adoption of the amendment. The Secretary will call the roll.

MR. BERGAN: Slow roll call.

THE PRESIDENT: Slow roll call asked for. Will twenty arise to support Judge Bergan’s proposal? A slow roll call is asked for. The Secretary will call the roll.

MR. ADAMS: I ask permission to be excused and explain my vote.

THE PRESIDENT: Without objection, Mr. Adams.

MR. ADAMS: I wish to vote no on this proposition. However, I feel there is considerable merit in the position taken by Judge Bergan. I am not in favor of the trust which he proposes, nor am I in favor of extending the liberalization to the extent that he proposes by this particular amendment to the proposition. I do, however, think that some of the statements which he has made and some of the statements which have been made on the floor should apply to certain portions of the areas outside of the blue line of the Adirondack and Catskill Mountains, and I think as later amendments may develop, I will find one which suits my position in that particular regard and for that reason, I vote no on this particular amendment.

THE PRESIDENT: Mr. Adams in the negative, and might I say that this amendment has now been debated for more than two hours and I trust that those who wish to explain their vote—and they certainly have a right to—will limit their remarks to a very brief account, if they can. The Secretary will continue the roll call.

(The Secretary calls the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 18; noes, 152.

THE PRESIDENT: The amendment is defeated.

The Chair recognizes Judge Froessel.

MR. FROESSEL: Hope springs eternal in the human breast. I should like to propose an amendment and the amendment is a very simple one and points to the single subject of public recreation.

THE PRESIDENT: Judge Froessel asks that the amendment need not be read, that he will explain the amendment. Judge Froessel.

MR. FROESSEL: The Stockmeister proposal contains that poetic language of “forever wild” with which every delegate in this room agrees.

The second paragraph of the Stockmeister proposal says “Inapplicability of prohibitions. The prohibitions of Section I of this article shall not apply.” And then he enumerates a number of exceptions. I should like to add this

simple exception to the end of that paragraph. "The construction, maintenance and operation of recreational campsites bordering on or in the vicinity of state or county highways with necessary access, water supply and sanitation facilities, all of which shall be in keeping with the surrounding areas.

We have been told that the committee who reports this proposition has adhered to the Constitution as it was written up to now. I am afraid I must disagree with that, and I also would like to say in this connection that the statistics quoted back in 1915 and 1931 are hardly applicable today. The people of this State in 1957 were asked to vote on an amendment, which amendment is subdivision two of Section three, and in that amendment for which the people voted a million and a half in favor and about 900,000 against, contained the words "the use thereof for public recreational or other state purposes." There is not a word about recreation in the present proposals. They are mistaken, therefore, when they say they are copying virtually what was in the Constitution hitherto.

You have this map before you, ladies and gentlemen, and if you will look at the boldface type at the bottom of that map you will find in large letters the words "Help yourself." To what? In capital letters, "to better outdoor recreation."

They speak about the two and a half million acre forest preserve and the country's finest state parks and public campsites are yours to enjoy, and yet they won't put one single word in their proposed Constitution, but rather take out reference to recreation which hitherto was there.

Now, ladies and gentlemen, this land, this forest preserve belongs to the people of the State of New York. They bought it, they paid for it, and right now they're paying \$4,000,000 a year just for taxes, aside from maintenance charges. They have a right to enjoy it and there is no such right in the Constitution now.

Conservation commissioners in the past have stretched the Constitution and they have erected not only within the Adirondack Park system, but within the blue line, at least forty campsites during the last three or four decades. There is no basis in law for their having done that. They cleared the land, and the difficulty about those campsites is that you cannot use them unless you bring with you a tent and a bed, a sleeping bag and equipment. Now, I am not criticizing the commissioners in the past for doing this, because they have only been trying to meet the demands of the people of New York to enjoy their own forest preserve. But at least there should be a legal foundation for it.

Mr. Fosberg, who is editor of the Conservationist, which is the official magazine of the Conservation Department, had this to say not so long ago when speaking of campsites. This was in the lead story of the official magazine of the Conservation Department.

"Almost everyone believes campsites are necessary and desirable, but which are certainly of doubtful constitutionality. Our lawyers have been forced into some rather devious reasoning. With campsites," he added "campers can be concentrated and supervised in suitable areas which lessens the danger of forest fires."

Now, the forest preserve is wrapped up in a gilded cage and the only persons who have free access thereto are hunters, sportsmen, and those who can climb mountain trails. I have camped in the hills of India and on the Arctic Ocean floor. I have also camped in the Adirondacks and I know that primitive camping is not easy, one must be accustomed to it and one must be rigorous and one must like it. There are many people in this State who cannot avail themselves of this opportunity. So far as the hunters are concerned, we were told yesterday in that article on the Adirondack park to be taken over by the national government, that the hunters got 3,550 deer last year and 350 bear. To them, this is a private preserve and of course they don't want to disturb it. It is true that many people do go to these campsites which have been constitutionally created and they are standing in line in peak periods in order to get

in. But these are the younger people who can stand the rigorous, primitive life that you have to stand when you bring along a tent which you have got to pitch and a sleeping bag or a bed and equipment which you have got to furnish.

Now, ladies and gentlemen, there are in this State a great many senior citizens, men and women who cannot do these things. With the population explosion as it has been, with longevity, with daylight saving, these people could enjoy the forest preserve if we would accommodate them. Even many of our younger people with children who would like to go there, can't let their children climb mountain trails or ascend mountain peaks. There ought to be some facility there to take care of these people. Judge Crane said in the McClellan case to which Charlie Stockmeister referred that the forest preserve is for the benefit of all the people, and while in that case they rejected the plea that a ski run be allowed, which later was allowed by Constitutional amendment, he made clear—although it was only dicta in that case—he made clear that campers or camping in the forest preserve is not inconsistent with the wildlife character of our forests.

Now, it seems to me that the time has come where the action of the Conservation Department in erecting these forty campsites, primitive though they are, within the blue line, and additional campsites outside the blue line, and after they have advertised to the people of the State of New York to help themselves to better outdoor recreation, it is time for us to afford an opportunity to these people to enjoy themselves as they have a right to. They are the owners of this land, and we as delegates have no right to deprive them of it. My amendment would serve to legalize or give a foundation to those campsites that have already been erected by the Conservation commissioners in the past and would also give them an opportunity of creating further campsites to accommodate the great number of people who are turned away or have to wait at the peak periods during the summertime. I would not like to take any action which in effect says to the people of the State of New York, this is your land but we cannot permit you to camp there.

MR. PETERSON: Mr. President.

THE PRESIDENT: Mr. Peterson.

MR. PETERSON: Mr. President, I speak in opposition to the proposed amendment. It is interesting to note that one of the heavier attacks on the forest preserve is in the name of recreation. Those of us who seek to protect the greatest of our recreational resources are somehow placed on the defensive as though the forest preserve were not available to the people of the state as the most valuable recreational resources. The facts are precisely the reverse. More than two million people use the preserve each year. They camp, they fish, they hunt, they walk, they simply look at the most beautiful lands in North America. It may be argued that the only thing they must not do are those which would destroy the unspoiled forest character of the preserve. The forest preserve does not and is not intended to supply every recreational need. The ball fields, the bowling alleys, the developed facilities are elsewhere. The motels and hotels, too, are elsewhere.

Now, what this amendment and others propose is simply that the state go into the hotel and motel business, and what the proponents of this amendment do not know is that ninety per cent of the lands of the state and sixty per cent of the lands within the forest preserve—the Adirondack and Catskill state parks—are privately owned and any owner can build anything from a camping area to a Grossinger hotel on them. It is not the function of the state, only apart from the forest preserve, to go into a business which can be staffed and supplied adequately by private industry. If motels are needed, they need not be supplied by the state, and if the state decides to supply facilities and enter the hotel business, it has millions of acres outside of the forest preserve to use for that purpose. These lands include the vast areas of Harriman and Bear Mountain and Allegheny and

Letchworth State Parks. And understand this, too, ninety-five per cent of the road frontage of the forest preserve is private land. There is no restriction whatsoever on hotel or motel building there by private owners. They may build cabins or Concords. This closed cabin issue is a historic one. Once before in the days when we needed unspoiled forest land far less than we do now, the people turned down such a proposal. It has far less validity now than it did then. Let us not be fooled by the cries of those who would tear down the wonderful protection built up by the people of this state over seventy-one years.

This amendment, Mr. President, and fellow delegates, should be defeated.

THE PRESIDENT: The Chair recognizes Mrs. Robinson.

MRS. ROBINSON: Mr. President, to you and to many other delegates, and perhaps to some of my friends, it may seem strange that I, representing a district of Brooklyn which probably has fewer trees than any other Senate district in the state, rise to make the most extended remarks yet made by me against Judge Froessel's amendment and in support of the Stockmeister proposition which deals with the forest preserve. I must confess that it is somewhat strange to me. If anyone had told me one year ago, or even at the beginning of this Convention, that I would have some significant part in this Convention's deliberations, and in the history being made by it, with respect to continuing the constitutional protection of the "forever wild" status of two million five hundred thousand acres of forest land, the only part of which I have seen is the summit of Black Dome Mountain from the Thruway near Saugerties, I probably would have challenged him in no uncertain terms.

I must also confess, Mr. President, that when I first learned that the powers that be—and the newspaper columnists say that you are one of them—had made one of my two committee assignments that of the Committee on Natural Resources and Agriculture and not that of the Executive or the Bill of Rights, there was a short period when even I had doubts about the wisdom of your leadership. After all, does not the very phrase, "forever wild", sound more psychodellie than "constitutional"? Doesn't the name, "Sierra Club", which I now understand to be one of the defenders of the forest preserve, sound more like a tired business man's place to eat and look at Bunnies than that of a group of conservationists?

But my doubts were short-lived. I decided that I owed my constituents the same earnest application to the problems of forest and cows as to municipal home rule. At the first meeting of our committee I was helped in implementing that decision not only by the graciousness of our committee members, like Mr. Stockmeister, our Chairman, Mr. Pomeroy, Mrs. Gordon and others who have had many years of experience in the field of work of the committee—and by a point made by some of the staff of that committee.

The staff's point was simple: They stated that whatever this Convention and the people decide about court reorganization, or qualifications for voting, or almost any other matter deemed to be the essence of constitutional law, that decision is revocable, that decision is changeable. A decision made one year may be revoked two years later. A decision about our natural resources, however, is not revocable so soon or so easily. We have one plundered planet to live on, until we get air conditioning on the moon, and I hope that when we get that air conditioning it will be better than that in some of the committee meeting rooms of this great building. We have one New York State, with 49,204 square miles, no more, no less. As the Chairman so often says, we have one forest preserve to protect or let go." If this Convention lets it go, the decision is binding far beyond the time of our lifetime and the lifetime of those who follow us.

And so, armed with the realization that what our committee was to study and respectfully report to you was of tremendous importance, I decided to apply myself seriously to learn about our State's resources, particularly the forest preserve. I wish to share what I have learned.

My first question was whether or not it is pretty. Through inquiry, photographs and movies I found out that it is not simply pretty but that many areas of our Adirondack and Catskill mountains, within the preserve, are as beautiful and awe inspiring as any on the face of this earth. I have seen only photographs of Lake Tear of the Clouds, the ultimate source of the Hudson River, or Mt. MacIntyre and Avalanche Lake, of the panorama of jumboed lands, of the sky viewed from Slide Mountain in the Catskills. I hope soon to go to all of those places. Mr. Sive, the Executive Director of our Committee, a most dedicated young man, who led some of our committee on a ramble through an area of the forest preserve—I regret that I could not attend—assures me, however, that I can go to each of those and many other places of great beauty. I shall, of course, urge that we walk a bit more slowly than the early pace set by that July 15th junket of our committee. Mind you, I urge the slow pace for no other reason than to be able to enjoy fully my surroundings.

Let me dwell on this beauty a moment. It is not a mere incidental. The Constitution of a beautiful State is as important as that of a beautiful child. And the beauty of a forest left alone from the axe, shaped only by the Creator's work for scores of years, is equally as fragile.

I learned that the constitutional protection of the forest preserve is much older than I, and that since 1894 the people of this State have affirmed time and time again their devotion to the Forever Wild principle, that at times it has not been easy to restrain those who want to appropriate it for themselves, or for some limited special interest, a mountain here, a river valley there, or the so-called "mature" timber everywhere. I learned—and this is perhaps the most surprising of all—that the defenders of the wild forest character of the forest preserve, like those of most other jewels of natural beauty, or areas kept free from the axe and the bulldozers—with all due respect to Mr. Brewer—by some inspiration such as that had by the Convention delegates of 1894, have historically been the people of the teeming cities and suburbs, as much as those who are blessed with the beauty of the unspoiled countryside in their backyards.

I also learned that our Democratic Party—the party of the immigrant waves, of the people of the slums yearning to break out of them, of those who have waited so long to take their place beside you who have secured your daily bread and a few of the amenities—our party has historically committed itself to the rigid protection of New York State's forest preserve; that 29 years ago it was Al Smith who dramatically turned back the 1938 pleas to turn the preserve into production forests, to "improve" them, to "manage" them better than the great Manager above. Certainly I hasten to add that I do not mean to make this a party issue. Neither the conservation of our resources nor any other of the great issues before this Convention are party issues. The great protectors of the forest preserve have been both Republican and Democratic. Some on both sides are here with us. I do mean to emphasize that the strong stand taken by the majority of our committee, by the Chairman and by you, Mr. President, is in keeping with the traditions, the principles and the history of those of us traditionally considered to be of the party of the urban areas. I tried to learn about my assignment from the people of our State as well as from the books and the experts. I sat through public hearings. I read the record of those I missed. I heard and saw the overwhelming weight of expressions of views by the people who came and spoke to us and their organized groups. By a ratio of 99.44% to 1 they asked us to keep, and keep protecting with our Constitution, our forest preserve.

Now, I have been on the periphery of politics, if not in the forest preserve—long enough to know that you cannot decide wise public policy by counting the number of heads at a hearing, or letters or telegrams to a committee. Nor do I lose sight of the fact that we are delegates to this Convention. The people have delegated much to our supposed wisdom.

I also tell you that I think I can tell the professional lobbyists from the people

who have no economic or professional axe to grind, and I might add that perhaps the one regrettable item of intemperance at our hearings was by a spokesman for private ski developers, who a few years ago wanted to lease out of the forest preserve Hunter Mountain in the Catskills, and now who pleads for wholesale leasing of it and other mountains. Unless I am the most naive amateur in this hall, the overwhelming majority of the people are with us. Keep the forest preserve forever free from sale or appropriation, they demand. And in this case, as in many more than some critics who would have us believe, good policy is good politics.

Let me say one final word. There has been a great deal said today and before our committee and much will be said here about some of the more technical aspects of the subject before us; the detached panels, the Blue Lines, forest fire control. A great deal was also said about the inaccessibility of the forest preserve, despite the fact that over a million camped in it last year, despite the fact that more millions viewed it, walked, fished and hunted in it than ever before. This, too, will be closely analyzed.

I speak for myself and some who have not yet heard a loon, or seen the morning mist rise from Spruce Lake, or intimately known the forest that has escaped the advance of highways, smog and overpowering noise. Perhaps some of us in many corners of this state and of many different heritages are still overwhelmed by the struggle to leave some rural or urban ghetto, and we have not yet had the time to feel as personally and as deeply as those of you who have picked the blueberries atop Mt. Colden, which has so enriched your lives.

For those people who, because of accidents of history, have not yet achieved the measure of security which they perhaps need before they can know the rarest beauties of the forest preserve, for them especially, and their children, I urge you to protect it, for I am confident that it will not be long—and other determinations of this Convention hopefully may speed the day—when we succeed in applying a small fraction of the genius we apply to flying to the moon to so ordering our economy and body politic that everyone will share some small part of our affluence. When that day does come, and those not yet so fortunate are able to pick those blueberries, I beseech you to please, please see that they are not behind a fence, across a thronged road or leased out. I urge you to defeat the amendment of Judge Froessel and vote for 1285-B.

Thank you.

THE PRESIDENT: I thought we agreed that we would not applaud each time. The Chair recognizes Mr. Rice.

MR. R. J. RICE: Mr. President, I rise to oppose Judge Froessel's amendment. I come from a district in Nassau County which is one of the largest metropolitan counties in the nation and I can tell firsthand that the people in my district are concerned with a total concept for our State, a concept which has as a basic element the preservation of the existing forest lands in our forest preserve in a Forever Wild state. This is the considered opinion of many with whom I have discussed this and—at length—and not one organization, not one individual, has expressed any desire or any opinion to the contrary. I would certainly think you would recognize that the people of my community have been to the Adirondacks and know first hand what is necessary to preserve this forest preserve, its unique qualities.

We feel that it is self-evident that you cannot build expanded campsites, resorts and rest homes for the aged and still maintain this unique character which is so valued over the past 70 years. We know enough about the preserve to take issue. We don't have to legalize these campsites which have existed over the past 40 years and on this basis we would again take issue with Judge Froessel because if they were not legal they have existed since 1920 and it would certainly mean that many, many of our public officials have been operating under a false flag and that the legislators, our Governor, and all those who have been at all concerned with the operation over all these years have been fooling the public.

We are not at all unsympathetic to the recreational needs that Judge Froessel has outlined. If there are people who cannot avail themselves of the rustic atmosphere and environment of the park then we certainly are conscious that there are tens of thousands of accommodations in the 40,000 square miles of land in this State of every sort from the Grossinger type to the simplest type of private camping accommodations with rustic privies. The forest preserve is less than 10% of the land area of the State, less than 18% of the total forest lands of the State. And—note this particularly—less than 1/10th of 1% of all frontage along highways throughout the State and less than 5% of all highway frontage in the Adirondack and Catskill State Parks is forest preserve. On the balance of this 95%, any type of recreational or resort accommodation could be built by any private owner in cooperation with the local communities and for the recreational problems that Judge Froessel has addressed himself to.

I would not like to take too much more time except to point out that in order to accomplish what Judge Froessel has indicated he would like to do, this amendment is not needed, moreover it's not wanted and I would urge the amendment's defeat.

THE PRESIDENT: Mr. Pomeroy?

MR. POMEROY: Ladies and Gentlemen of the Convention: I would just like to make a couple of very brief remarks about Judge Froessel's amendment and in opposition to it.

The Commissioner of Conservation at the present time has embarked upon a major program of the forest preserve. There are at present 49 campsite locations with 6,209 tentsites. In five years the campsite locations are going up by one-third and the tentsites within those campsites are going up by 50%; that's the ratio, that's the scope, the intention of the Conservation Commissioner in developing these campsites for the use of the people in the forest preserve. I also wish to point out that the Commissioner testified before Chairman Stockmeister's committee and said he saw no reason for changing Article XIV within the Blue Line.

Now I would like to say another word about the campers that go up to these campsites. They aren't people who live in tents when they would rather be in cabins. They are people who live in tents or go up in trailers, because that is the way they want to go.

There is a very large and fast-growing organization, Trailers, Hikers and Campers Association, who go up to places like this, to private campsites as well, and they live in those tents because they want to.

The State is giving these people what they want there and there is no need at all for Judge Froessel's amendment.

THE PRESIDENT: The question occurs upon the adoption of the amendment. Will the members indicate by a show of hands those in favor of this amendment? We can take an aye and nay vote, I am sure.

The question occurs upon the adoption of the amendment. All in favor of the amendment indicate by saying aye; all those opposed indicate by saying no.

The amendment is defeated.

MR. BENSLEY: Mr. President.

THE PRESIDENT: Mr. Bensley.

MR. BENSLEY: Mr. President, I rise to amend Proposition 1285-B and to speak on the amendment.

THE PRESIDENT: Mr. Bensley moves to amend, offers an amendment, waives its reading and will explain the amendment.

MR. BENSLEY: Members of the Natural Resources and Agriculture Committee are in the process of proposing amendments. One of the amendments pro-

posed by the minority of the committee would place the burden of proof upon the State should the State seek to dispose of any forest preserve acreage outside the Blue Line for other than conservation, park or recreational purposes. Another would require that all monies derived from the sale or disposal of such lands outside the Blue Line be used to purchase more Forever Wild lands inside the Blue Line as the beginning of a long range plan to increase the size of the park for the enjoyment of future generations.

There is nothing more important during this Constitutional Convention than the preservation and the increased opportunity for enjoyment of nature's bounties within the State as a balance to the onrushing mechanism of society and population multiplications which threaten to destroy everything that has been dear to mankind's heart. Two lives ago, just two generations ago the nation was a wilderness from the Alleghanies to the Pacific. Now, it is a series of vast urban and suburban areas. What will it be two lifetimes from now?

Preserving the Adirondack and Catskill wilderness and forest areas is not sufficient, not nearly sufficient. As an addition to Forever Wild for the two parks, we suggest a natural resources policy statement for the purpose of recreating a Forever Beautiful future for as much of the State as possible, where the people of the State live and will live. The policy statement would be a separate article. It leaves the specifics of hearings and procedure to the Legislature. This area is too broad, too vast for specification now.

The Forever Beautiful and Forever Wild ideas are interrelated. We believe that with this policy statement in the Constitution the present and future State governments will find it easy to move in the direction of—

MR. STOCKMEISTER: Point of order.

THE PRESIDENT: Mr. Stockmeister will state his point of order.

MR. STOCKMEISTER: I believe what you are discussing is before our committee, and this is not germane to the forest proposal, it is not an amendment. Is this an amendment?

MR. BENSLEY: Mr. Stockmeister, the amendment is about two words away.

THE PRESIDENT: Mr. Stockmeister, he is explaining his amendment now; he is amending the bill before us.

MR. BENSLEY: The article would read as follows—it is closer than I thought—on page 3 after line 4 insert "Section 4. The proposed new Constitution shall include an article on natural resources as follows: Section 1, natural resources. The protection, conservation and promotion of the natural resources and scenic beauty of the State and the development of programs designed to insure the best possible use of these resources for conservation, recreation and aesthetic purposes are hereby declared to be the policies of the State and matters important to all the people of this State and the interests of their health and welfare."

Now, let me conclude saying this: All through this nation, in the Carolinas, Maine, California, Illinois, Massachusetts and the Rocky Mountain states, the battle is on to preserve nature's beauties. Because of the terrific pressures of population and the forecasts of future populations, because everything is changing so quickly, conservation has become one of the most powerful ideas in the world. Even in the vast areas like Canada, above the populated border, South America and Africa, people who can see the future are working towards conservation. Let New York State lead the way again, not only by maintaining our Forever Wild areas within the Adirondacks and Catskill Parks, but by embarking upon the program to insure natural scenic and aesthetic beauty wherever possible in this State. The other states will follow our example.

Thank you.

THE PRESIDENT: The Chair recognizes Mr. Levitt.

MR. LEVITT: Mr. Bensley, as you know, all the proposals that are before us today have been considered by the Sub-Committee and the Committee itself. I am surprised that you bring this amendment up at this time.

By and large I think the amendment has merit. It coincides with other amendments that have been submitted by several members of the Conservation Committee, and it was decided, as you know, at our last meeting to consider this by the Committee as a whole at their meeting tomorrow.

I think that we should not vote favorably upon this amendment, not because I don't believe in much of what you have to say there, but I think it is entirely inappropriate to consider it as part of this article and before all the members of the Committee have had a chance to review this proposal. So I would say that I would not favor your proposal at this time.

Will Mr. Bensley yield to a question?

MR. BENSLEY: Yes.

MR. LEVITT: Will you consider putting this proposal over until next week?

MR. BENSLEY: Mr. Levitt, let me say this.

THE PRESIDENT: May I interject a moment? We are on an amendment to a bill that is before us. We can't postpone any such amendment and I hope that after this amendment, and any other amendments that we may have before us, that we can get to the main proposition, so I think, Mr. Bensley, if you want to press your amendment, you may.

MR. BENSLEY: Mr. Levitt, no, I would not put it over until tomorrow.

THE PRESIDENT: Does anyone wish to be heard on this amendment by Mr. Bensley?

The question occurs upon the adoption of the amendment. The Secretary will call the roll.

(The Secretary called the roll.)

THE PRESIDENT: All those who are opposed to the amendment raise their hands.

MR. BRYDGES: Slow roll call.

THE PRESIDENT: A slow roll call is asked for. It is apparent there are more than twenty. The Secretary will call the roll.

(The Secretary called the roll.)

MR. BRYDGES: Mr. President.

THE PRESIDENT: The Chair recognizes Senator Brydges.

MR. BRYDGES: I wish to explain my vote.

THE PRESIDENT: Without objection, Senator Brydges.

MR. BRYDGES: Mr. President, I think that the concern of the people on this side of the aisle, and I expect it is the concern on the other side of the aisle, is with matters of environmental health. Now, while I expect that the committee is going to ultimately report something in the nature of the Levitt proposal, I have no way of assuring myself of that fact right now because after all, your party controls this convention. And so here we have an attempt to append to this proposition an amendment which I think should be generally acceptable to everybody, because in no way do we foreclose later consideration of some alternative proposal.

My concern with environmental health is because man has so polluted and

despoiled his environment that even the great cleansers of nature, rain and wind, can't cleanse it any longer, and I think this constitution would perform a monumental task if we recognized here the primary importance of not only preserving our environment as it is, but also to improving the environment as we pass it along to future generations, and I can't understand, Mr. President, why anyone can vote against this proposal and I vote "aye" on the amendment.

THE PRESIDENT: Senator Brydges in the affirmative. The Secretary will continue the roll call.

(The Secretary continued with the roll call.)

MR. DENNEHY: Mr. President, I ask to be excused from voting.

THE PRESIDENT: Without objection, Mr. Dennehy.

MR. DENNEHY: I am in favor in principle with Mr. Bensley's amendment, but I do not think it should be part of the amendment to the Stockmeister proposition. I think we should have the opportunity to study this further and come out with a decision. Accordingly, Mr. President, I vote "no".

THE PRESIDENT: Mr. Dennehy in the negative.  
(The Secretary continued the roll call.)

MR. LEVITT: I would like to explain my vote.

THE PRESIDENT: Without objection, Mr. Levitt.

MR. LEVITT: I think what we are just witnessing, in my judgment, is a severe violation of the whole committee procedure. In this very committee we had a long debate several weeks ago about delaying our vote on the Stockmeister proposal so that all committee members on both sides could have a chance to debate. We did this out of deference to the minority members of the committee.

Here we have at the last minute an attempt to interject something which has been set forth in the minds of Mr. Bensley and all the others who were a party to the committee to discuss this tomorrow. As I have said before, I am for this proposal, but I am compelled to vote "no" for the reasons that I have just stated.

THE PRESIDENT: Mr. Levitt in the negative.  
(The Secretary continued the roll call.)

MR. SCILEPPI: May I explain my vote?

THE PRESIDENT: Without objection, Mr. Scileppi.

MR. SCILEPPI: It is my understanding that the Chair ruled last week or the week before that before an amendment be reported on it would have to be presented to the delegates at least twenty-four hours before it was submitted to this body. Now, certainly it didn't come to my attention and if the rule is still applicable, I would say that we should at least get a copy of it so that we know what we are voting on.

If that is the rule, and I think it is, my vote is "no" because there has been no compliance with the rule.

THE PRESIDENT: Mr. Scileppi in the negative.

SENATOR BRYDGES: If I might say a word about Judge Scileppi's remark. As I remember, it was not a rule at all, it was a suggestion that anyone who had amendments should submit them to the leaders on both sides of the aisle. This was done.

MR. WEINSTEIN: I beg your pardon.

MR. BRYDGES: At least I received one.

MR. WEINSTEIN: Mr. President, just for the record, I want to make it clear that the distinguished Senator on the other side speaks only for his party and himself.

(The Secretary continued with the roll call.)

MR. SHAPIRO: May I be excused from voting and explain my vote?

THE PRESIDENT: Without objection, Judge Shapiro.

MR. SHAPIRO: Without considering the merits of this proposal, because I don't know enough about it and I would want to consider it, it seems to me we are defaming and destroying the entire committee system on which this Constitutional Convention is acting.

I understand from Mr. Stockmeister, from Mr. Levitt that this proposal embodied in the amendment is now before their committee for consideration. They haven't had a chance yet to act upon it. Senator Brydges said he would go along with Mr. Levitt, but he has no way of knowing what they are going to do with it. If they want to preserve their rights, we are merely moving these things on to third reading. If on third reading the committee hasn't come in with what they want, they can move to amend. This is a circuitous way of undermining the committee system and it is purely a partisan and political maneuver. I vote no.

THE PRESIDENT: Judge Shapiro in the negative.

(The Secretary continued the roll call.)

MR. STOCKMEISTER: I ask to be excused from voting and briefly state my reasons.

THE PRESIDENT: Without objection, Mr. Stockmeister.

MR. STOCKMEISTER: It was my understanding at the last meeting we had, that the staffs on both sides were working on this section and it was agreed, and I thought everybody understood this, that we would take it up tomorrow. And now I find you come in with a whole new article as an amendment.

I can assure you that this will be taken up and be considered. I have never gone back on my word and you can take my word for it. However, on this I have to vote no.

THE PRESIDENT: Mr. Stockmeister in the negative.

(The Secretary continued the roll call.)

MR. VAUGHN: Mr. President, may I be excused from voting and briefly state my reasons?

THE PRESIDENT: Without objection, Mr. Vaughn.

MR. VAUGHN: Members of the Convention: I would like to read to you the language of the proposed amendment so that we all know what we are voting on. "The protection, conservation and promotion of the natural resources and scenic beauty of the State and the development of programs designed to insure the best possible use of those resources for conservation, recreation and ascetic purposes are hereby declared to be policies of the State and matters important to all the people of the State and in the interests of their health and welfare.

Now, I would like to say that I am in favor of those words, and I am surely glad that motherhood was not included or the Democratic majority would have voted against that also. I vote yes.

THE PRESIDENT: Mr. Vaughn in the affirmative.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: I think that the time has come for me to take my stand

on some of the things that confront this delegation without having anything to do with the issues at hand. I am tired of having the whip cracked over my back about partisan politics. I commend to my distinguished colleague a reading of the testament "Let him who is without sin cast the first stone."

THE PRESIDENT: The Secretary will continue with the roll call.  
(The Secretary continued the roll call.)

MR. BARTLETT: I ask my name be called.

THE PRESIDENT: Mr. Bartlett.

MR. BARTLETT: I don't want to throw any stones, I just want to vote aye.

THE PRESIDENT: Mr. Bartlett in the affirmative.

MR. BELL: I ask my name be called.

THE PRESIDENT: Mr. Bell.

MR. BELL: I cast my vote in the affirmative.

THE PRESIDENT Mr. Bell in the affirmative.

MR. BREVETTI: I ask my name be called so I can record my vote.

THE PRESIDENT: Mr. Brevetti.

MR. BREVETTI: No.

THE PRESIDENT: The Secretary will announce the result.

THE SECRETARY: Ayes, 81, noes 94.

THE PRESIDENT: The amendment is defeated.

MR. SPISIAK: Mr. President.

THE PRESIDENT: Mr. Spisiak.

MR. SPISIAK: Mr. President, I hope that you will hear me and hear me out.

THE PRESIDENT: I hope all the delegates will, too, because you will find I am very attentive.

MR. SPISIAK: Thank you, Mr. President.

I rise to offer an amendment to Proposition 1285-B which I am more than certain will meet with the approval of our very distinguished and very capable Chairman, Mr. Stockmeister, who has labored hard and has suffered much abuse but who is, in the final analysis I am sure, receiving some satisfaction from the suport that he is receiving here today.

I speak here today as a Republican-Liberal-Conservative-Conservationist. I address myself, my fellow Constitutional Senators, as I would like to call you, I speak as a member of the Natural Resources Committee, I speak as a member of the New York State Conservation Council, as an officer and as a past Director, and as a member of the Forest Preserve Committee of that organization and as Chairman of its Water Resources Committee for over 20 years.

In the audience here today we have the distinguished President, Mr. Edmund Moritt, who is here behind me to offer both moral and physical support if I should require it. I am not too sure that won't be necessary.

I also wish to state at this time that the matter before us is being watched with a great deal of interest by Mr. Forest Preserve himself who is sitting at the back of the room also, and that is Mr. Paul Schaffer.

THE PRESIDENT: Mr. Spisiak, would you suffer an interruption. Would you send the amendment up so the desk can have it?

MR. SPISIAK: Yes, I shall.

THE PRESIDENT: Please explain the amendment first.

MR. SPISIAK: I shall read the amendment so that you will know to what I address myself.

The amendment is intended to be placed in the present Stockmeister proposition, and before I read it let me say this. I am not proposing an amendment to Article XIV, because Article XIV contains the very wording which I shall read. The omission I am sure, Mr. President, was not of intent, but more likely of oversight, for it is one of the most important provisions of Article XIV, and to eliminate or delete this portion would be a grave error and a miscarriage of justice.

I propose on line 22, page 2, after "forest preserve" to insert: "Provided, however, that all monies derived from the sale or other disposition of any such land shall be paid into a special fund of the treasury and be expended only for the acquisition of additional land for such forest preserve within either such Adirondack or Catskill park."

Now I might state right here that many people might feel that the lands to be disposed of as provided in the Stockmeister proposition which calls for up to 10 acres to be disposed of by sale, this I hope would be amended in subsequent amendments to be offered perhaps by Mr. Pomeroy who understands this so well, these funds have been heretofore earmarked for the acquisition of land within the Blue Line. Certainly I would not have to stand on this floor and defend my stands in the past as a friend of the forest preserve and the Forever Wild provisions therein. Many of my friends think I am just as Forever Wild as the provisions of the charter. I would state to that that I am when it comes to the protection of something so valuable to us as this forest preserve.

Previous speakers have outlined to you the need and necessity of those of us who are privileged to be the temporary custodians, if you will, of this valuable heritage which we all guard. For no man has more than a temporary possession, and we as residents of the State have no more than a temporary reposal on this earth, and the use of these lands only for a very limited length of time.

This amendment if adopted would help us to strengthen measurably the hold that we have on that 40% of it. If you have your maps, if you study your map you will find many white areas completely surrounded by green areas. These are areas presently owned by private interests, many of whom would like to dispose of this property, many of whom would make this property available. It is to this that I direct my statement, this is what I am talking about.

So that you will understand how valuable some of this land outside of the Blue Line is, I cite one instance where just recently a half acre parcel near Kingston, New York was sold for \$5,700. \$5,700 within the Blue Line area of the Forest Preserve of the Adirondacks and Catskills would purchase in some instances hundreds of acres and would permit the solidification, if you will, of the hold that we have within the Blue Line. It is to this that I direct myself, and I point out that the discussion here previously held in which it was stated that it is necessary to wait for many hours in order to enter into some of these campsites. To me as a businessman and a jeweler, if I saw my competitor having people stand in line and wait for his services, I would then be sure what he has to offer is very, very valuable, and I think that this is the case, that what we have here, what we are protecting and preserving has a value second to none for which people will wait, they will wait so long if we have the very condition that creates the situation that we have within the forest preserve.

If we were to weaken or change any of the things that we are doing there, I am sure you wouldn't need to worry about the percentages that we own or do not own, because the people would not be half as eager as they are at the present time.

So Mr. Chairman, I say that a vote on this amendment which I propose is certainly an effort to help Mr. Stockmeister give us the Article XIV with all of the major provisions as he states in his statement in which he says this proposition retains in full all the constitutional protection now given the forest preserve. I say that it shall with this amendment give us what we desire, and that which we seek, and which I am sure our good Chairman, Mr. Stockmeister desires.

I urge and beg you, and those of you especially who are affiliated with the other party to which I claim partisanship, please all of you, Republican, Liberal, Conservative, Conservationist join me in supporting this amendment.

MR. STOCKMEISTER: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President, fellow delegates: In the ten years that the department had the authority to sell any of these lands, we sold just one parcel; that money and any other monies derived from the sales must be by present statutes spent for lands inside of the blue line. I see no need that we have to clutter up this Constitution with such a provision as this and I urge the defeat of this amendment.

MR. BENSLEY: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Bensley.

MR. BENSLEY: Mr. President, delegates: I rise in support of the Spisiak amendment. I can think of nothing better for the future of our forest preserve than if we can add to the existing parcels within the blue line. I think this is the most logical reasoning when it comes to the idea of enlarging and preserving more of these vast areas within the blue line. Of course you have to dispose of properties outside the blue lines in order to do this.

At this time, too, Mr. President, I would like to correct a gross error that has been made, for the benefit of the delegate body and the press.

Mr. Stockmeister, you suggested that in reference to my last amendment this was brought up and that we agreed that it would be brought before the full committee tomorrow. To the best of my ability, this has never been mentioned to me or to any member of my committee, and, furthermore, you were aware of this amendment as we were talking about it the other day and knew full well that it would have been presented today.

MR. LEVITT: Mr. President.

THE PRESIDENT: I recognize Mr. Levitt.

MR. LEVITT: I find this just a little bit fantastic. All of this discussion about this latest amendment. Let's keep one thing in mind; that in the past ten years less than \$500 would have been derived from the sale of such pieces outside the blue line. Contrasting that to the tens of millions of dollars that come to the General Fund for the acquisition of properties, I think this is ridiculous. It's an additional encumbrance on the Constitution and it's meaningless. Five hundred dollars in the past ten years. I would urge that delegates in the interest of making this constitution free of meaningless trivia to vote down this amendment.

MR. SPISIAK: Mr. Chairman.

THE PRESIDENT: Mr. Spisiak.

MR. SPISIAK: If I may be given the privilege of wearing an additional hat to which I claim ownership, I would speak now to the deficiency that exists in the current manner in which these lands are disposed of which would permit the Legislature greater exercise if they would consider the fact that the one handicap, the one reason why the Conservation Department representing the State of New

York has been unable to make sales of these lands, has been the manner in which they are sold, not because people don't desire them. Under the present setup of getting a guarantee title in any instances the cost of disposing of these parcels of land would be prohibitive. It would be my further suggestion that these sales be made as they are made by business, big business if you will—telephone, utilities and electric utilities;—that these claims be consummated by quitclaim deed which would greatly expedite the manner in which these sales are made and which would aid in assisting of disposing of any more of these tracts of land. I say to you, there is no question now. You are raising a question as to how many sales have been made. If there are no sales made, why do you fear this amendment? This amendment in itself stands for what we have had in the Constitution.

Do you, sir, tell me that Article XIV was no good the way it was written? Do you mean to tell me that Article XIV had in it things that should not be contained in it and will you face the people and tell them that you have given them an Article XIV as strong as they have had? Not if you defeat this very strong loophole. There is a leak in the dike. I will place my finger in and I will ask you to stand behind me.

(Applause)

THE PRESIDENT: The Chair recognizes Mr. Pomeroy.

MR. POMEROY: Mr. President and ladies and gentlemen in this Convention: I think that the record will show that the statute which provided for this money being used for the purchase of forest preserve property within the blue line came along at the same time that the amendment was proposed by the Legislature and approved by the people. So it is in the statute books and it's only in the statute books. Mr. Spisiak sort of paved the way for an amendment which I am about to introduce and that amendment would amount to a great deal more in money value than the ten acres at present. As much as I hope that amendment will prevail, and I feel that we should make sure that any money which is derived from the sale of these parcels does go to the acquisition of parcels within the blue line, I urge the approval of this amendment.

MR. GREENBERG: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Greenberg.

MR. GREENBERG: Mr. President, I am opposed to the earmarking of any funds in the Constitution for any specific purpose. I can tell you, ladies and gentlemen, that as a matter of actual experience in those states in our Union where earmarking of funds is a common experience, common practice, that those states run into trouble. It is not good government to earmark funds received from any source to a specific purpose, in the Constitution or by statute either, for that matter. Furthermore, if there is a need, any desire, any intention on the part of the State of New York upon the recommendation of its Conservation Department to buy any land within the blue areas, we do not need the money to be realized from the sale of any of these parcels. We have a right to appropriate such monies for these purposes and from what little I have heard here in the last ten or fifteen minutes, the proceeds have been so insignificant that we really couldn't buy anything worthwhile and if that is what we are talking about, I think we are spending a lot of time unnecessarily. If and when we are ready to buy lands within the blue marks, within the blue lines, it's up to those who advocate such lands to convince the Legislature and we will try and find the money for that purpose.

MR. SPISIAK: Mr. President, will the Senator yield?

MR. GREENBERG: I will try to.

THE PRESIDENT: Mr. Spisiak.

MR. SPISIAK: Then, Senator, it is my understanding that you oppose the earmarking of funds in the Constitution of the State of New York?

MR. GREENBERG: I do, generally.

MR. SPISIAK: Then you are opposed to the Constitution as it now reads in Article XIV. Are you also opposed to the establishment of a conservation fund which was also established in that Constitution and now do you propose that the conservation fund be abolished at the present time?

MR. GREENBERG: If I had been a member of the Convention in 1938, I would not have voted for the earmarking of the proceeds of the sale of the ten-acre lands for the purchase of lands within the blue areas.

I have just been advised that as to the other part of your question, it is not in the Constitution. Furthermore, while I am on my feet, even though I may not be—what I am about to say may not sound good to the conservationists—it is wrong, it is absolutely wrong in my opinion to take the two dollars or the five dollars that the hunter or the fisherman pays and put it aside. Now I am opposed, as I have said publicly time and time again, and this is even of more importance because it involves many, many more millions of dollars, I will vote against any proposition to earmark gasoline taxes, motor vehicle license fees for the building of roads and that has been demanded and fought for and is found in many states. But it is wrong. It's not good government. I am opposed to the earmarking that is involved here.

MR. SPISIAK: Then you are not voting as a member of the 1938 Convention, but, fortunately, as a member of the 1967 Convention. I'm glad you made it, Senator.

MR. GREENBERG: I am very happy I arrived today.

THE PRESIDENT: Can we follow a little bit of procedure? The Chair will recognize the members. Does any other member wish to be heard on the Spisiak amendment?

MR. ADAMS: Mr. Chairman.

THE PRESIDENT: Mr. Adams.

MR. ADAMS: I would call attention to the fact that the provision in the present Constitution relating to the use of money from the sale of one property for the purchase of others is in Article XIV, Section three, which is not carried over in the Stockmeister amendment. Neither do I find it in the Conservation Law because its only reference is in Section 3-0151, which has to do with monies received from the sale of lands sold for silviculture.

MR. BURNS: Mr. President.

THE PRESIDENT: Mr. Burns.

MR. BURNS: I would just make the comment, ladies and gentlemen of the House, that we have talked long about the forest preserve today and I think our words are being echoed and will be. It seems to me that there can be much assurance given to the people of this State. Thinking about the suggestions to build up a forest preserve, it makes sense to say that any lands presently held would be used to consolidate these wonderful holdings elsewhere. It is now a matter of the present Constitution. All that Mr. Spisiak seeks to do is to list the identical language, put it into the Stockmeister proposition and continue that

which is in itself of great value as all of us join to cement, to consolidate, to solidify the holdings of the State in the forest preserve. I think it has a great value from that standpoint.

(Applause)

MR. FASULLO: Mr. President.

THE PRESIDENT: Mr. Fasullo.

MR. FASULLO: Ladies and gentlemen of the Convention, I do not profess to be an expert in the field of conservation. However, this matter of the sale of lands outside the blue line, it is my understanding, is a new section to be incorporated in our constitution. I am certain that the intent behind this is to protect our forever wild areas with the blue line and provide more land within that blue line area from the land outside of it. It seems illogical to me not to include this financial aspect of it and depend on our statutes for this purpose. I think the Spisiak amendment is an excellent one and I would go on and vote in favor of it and urge that all delegates do likewise.

THE PRESIDENT: The Chair recognizes Mr. Slocum.

MR. SLOCUM: Mr. President, will Mr. Spisiak take his finger out of the dyke to yield to a question?

THE PRESIDENT: Mr. Spisiak, will you yield?

MR. SPISIAK: Gladly.

MR. SLOCUM: If 1825-B becomes constitutional law without your amendment and a piece of property is sold, would you tell me what would happen to the proceeds?

MR. SPISIAK: They would go in the general fund.

THE PRESIDENT: The Chair recognizes Mr. Norton.

MR. NORTON: I wonder if Mr. Stockmeister would yield to a question?

THE PRESIDENT: Would you yield, Mr. Stockmeister?

MR. STOCKMEISTER: Sure.

MR. NORTON: I was under the impression from your earlier remarks that the section on the Legislature somewhere would cover the expenditure of these moneys. I understand from Mr. Adams that that is not so.

MR. STOCKMEISTER: It's in the public lands law.

MR. NORTON: The what?

MR. STOCKMEISTER: In the public lands law.

MR. NORTON: Do you have the section, perchance?

MR. STOCKMEISTER: I think it's section 24.

THE PRESIDENT: Does anyone else wish to be heard on the amendment?  
Mr. Bensley?

MR. BENSLEY: Will Mr. Spisiak yield to a question?

THE PRESIDENT: Mr. Spisiak, will you yield?

MR. SPISIAK: Yes.

MR. BENSLEY: I believe you mentioned, and I think it should be emphasized—did you say \$5,700 was paid for a parcel?

MR. SPISIAK: \$5,700 for half an acre.

MR. BENSLEY: I think this is a larger figure than the general impression that has been given around this body and I think it would be quite instrumental in additional purchases of land within the blue line.

MR. SPISIAK: If I may answer you, Mr. Bensley—and I would like this opportunity, Mr. President—I can state on the basis of the twenty years' real estate experience I have had that in looking at the parcels of land outside of the blue line, as against those within the blue line to which this specific amendment is directed, that many of the so-called detached parcels are partially or wholly within cities, villages and towns. Many of those currently are being used as garbage and refuse dumps only because of the fact that the ownership has not been clearly established and that the state has no use for them in their present condition. Under the provisions of the existing law it has been possible to dispose of these pieces of detached land. However, as I have pointed out previously, the difficulty in disposing of these parcels is largely one that can rightfully be handled by the State Legislature and provision should be made to that extent.

This is not constitutional, nor does it require constitutional provision, or I would have incorporated this in my amendment, but I was informed that we have, as I well know, a very capable Legislature which can and should rightfully provide for the disposition of these detached parcels by the method which I have previously outlined, which is a quitclaim deed. In that event, the six thousand acres or more, if you will, if the Pomeroy amendment ever comes up, would give us perhaps hundreds of thousands of dollars for the purchase of lands wholly within the blue line. I am a little bit disturbed to think that there are people here who think that these inconsequential amounts of money need not be worried about; that we should not be concerned with them.

As a conservative minded individual, who has had to earn every penny that he has, I can say that I am concerned with everything that I possess and everything that I own and dispose of. I am very sure that if it were not for those people in the State of New York who so zealously have guarded the forest preserve as it is now constituted, and those who came before them, we would not have the forest preserve—if our forefathers and those who served in previous conventions had been so lighthearted and so political, if you will, about the decisions that they have made in the past. I know there are many on the Democratic side who perhaps fear as I do that this matter of the forest preserve transcends party lines, transcends all division lines. There is no division among those of us who love the outdoors as expressed by many of those previous speakers on both sides of the aisle. We love that forest preserve and if we seek to protect and preserve it, why should we not provide this additional protection because if we vote against my proposition we are in effect stating that in 1938 the delegates did not know what they were doing. There were not too many, as one of our former speakers who said he would have voted against it had he been there; fortunately, there were enough of them either on the other side of the aisle or at least thinking otherwise who made it possible for that provision to be included.

I again state to you, Mr. Bensley, that I sincerely believe that this amendment has much merit to offer and the possibility and prospect of greatly strengthening that within the blue line.

THE PRESIDENT: Upon the adoption of the amendment. The Secretary will call the roll.

MR. SPISIAK: Roll call.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary calls the roll.)

MR. C. E. RICE: Mr. Chairman.

THE PRESIDENT: Without objection.

MR. C. E. RICE: I would like to say, that as a general proposition I agree with Mr. Greenberg that funds should not be earmarked. However, this is not a matter of original judgment. If it were an original question, perhaps I would vote the other way. The problem is today that if we vote against this amendment our action is liable to be construed as a decision not to consolidate the forest preserve. I am firmly in favor of consolidating the forest preserve and with that reservation, Mr. Chairman, I vote in the affirmative.

(The Secretary calls the roll.)

MR. ROONEY: Here I am again, and I don't know which side of the aisle I ought to be on, but I feel that this afternoon demonstrated partisan politics on a very serious thing of the constitution. I feel that this provision here in this amendment has been in the constitution and I happen to have good reason for taking it out. I would like to preserve forever wild and I am in favor of the amendment.

(The Secretary continues with the roll call.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 73; noes, 98.

THE PRESIDENT: The amendment is defeated.

The Chair recognizes Mr. Pomeroy for the purpose of an amendment.

MR. POMEROY: Mr. President, I offer the following amendments, move their adoption and ask permission to explain briefly the amendments.

THE PRESIDENT: Without objection, Mr. Pomeroy.

MR. POMEROY: Mr. President, I wish Judge Froessel to know that the springing of hope eternal is not confined to the other side of the aisle. The recent demise of the previous amendment, I think, is unfortunate, but I am going to have to rely on Senator Greenberg and the Legislature in days to come if my amendment is adopted to see to it that the money, or at least an equivalent amount, is put into the forest preserve within the blue lines to strengthen the blue lines.

Now, my amendment is a very simple one. On page 2, line 21, after "then", strike out "ten" and insert "one hundred".

We are speaking now of these detached areas outside of the blue line which do not amount to much in the way of property, it is perfectly true. Nevertheless, it may have been an administrative headache for many years. As a matter of fact, as far back as 1952 the Commissioner of Conservation asked that this matter be studied, and it was given to the Committee on Natural Resources, under Senator Wheeler Milmo, first priority at that time. The problem with these areas is that most of them, while small, were acquired by tax sale, and were of no particular use. There are some larger ones which are of use to the state, but the smaller ones, in general, are not. However, they may be useful to local governments. If one, for instance, is in a town which would like fifty acres for a park or some other recreational field, they could be very useful indeed. Therefore, it is my thought that these detached areas outside of the blue line up to one hundred acres should be subject to disposal. Now, I want to make this clear. This does not mandate the state to get rid of these parcels. As a matter of fact, a further amendment to be introduced will require that the state show that it has no further useful purpose in keeping these detached parcels. But I want to submit that these small detached parcels, even though ten acres, have subjected the forest preserve article to criticism,

and by eliminating this criticism to the extent of one hundred acres, we will also deter future amendments on the forest preserve and therefore, to that extent, strengthen it.

I want to point out that the Conservation Commissioner, although he feels that the present provisions of Article 14 within the blue lines should not be amended, he is in favor of more liberal allowances outside of the blue line. He would like to dispose of all the acres, be able to dispose of all the acres, if he should see fit. That, of course, does not mean that he would want to do so, but I think that practical politics indicates that we should not try to dispose of, at the present time, parcels of more than one hundred acres. However, the Commissioner in a statement before the Stockmeister committee, did say that although he approves of Article 14 as it is within the blue line, he would like a liberalization outside both for the disposal of the detached areas and also for further leniency, for research, perhaps on forest and wild life management.

Now, in substantiation of this amendment, I want to quote first a Mr. Arthur Crocker, who is the President of the Association for the Protection of the Adirondacks, in which he comes out and says specifically—

MR. BURNS: Mr. President, may we have a little order in the house?

THE PRESIDENT: Will the Sergeant-at-Arms please ask the visitors in the chamber to leave the floor and go behind the glass partition, and will the delegates please assume their seats, and may we have some order? I am sorry, Mr. Pomeroy.

MR. POMEROY: Thank you, Mr. President. Mr. Arthur Crocker, President of the Association for the Protection of the Adirondacks, has come out specifically endorsing lands of not more than one hundred instead of ten contiguous acres be accepted for restrictive provisions. It is our position that such a change would ease the administrative problems of the Conservation Department and would probably result in more meaningful use of these small parcels which have little if any wilderness values.

We have also, from Mr. Herman Forster, Chairman of the Board of the New York State Conservation Council, the following letter:

“Dear Senator Pomeroy:

Both President Moret”—who is in the chamber—and acknowledges this letter —“and I have talked to a number of conservation leaders in the state. All were unanimous in asking that the 10-acre restriction be increased to 100 acres. Our reason is based on the fact that no isolated tract of 100 acres or less can ever become wilderness in the true sense of the word.

“Secondly, we are for the use and dedication of forest preserve land within the forest preserve counties but outside the blue line for forest and wild life conservation.

“If any additional assurances are required, I am certain that I can get them from President Moret and the other officers of the Council.”

We have a telegram from Lawrence A. Williams, Chairman of the Forest Preserve Committee of the State Conservation Council:

“New York State Conservation Council favors strict protection of forest preserve within the boundaries of the Adirondacks and Catskill parks. It does not oppose a more liberal use of scattered forest preserve parcels outside of such parks. It will accept a change for sale of such lands from ten to one hundred acres.”

I also have a telegram from Mr. Paul Schaffer, President of the Friends of the Forest Preserve, an organization which has worked harder on the forest preserve, perhaps, than any other organization:

“There are now two hundred thousand acres of state-owned timber production forest inside the forest preserve counties but outside the counties of the Adirondack Park. I favor liberalizing the scattered parcels of forest preserve outside

of the Park boundaries. It should still be permissive, if there be wild lands in such areas, at discretion of the State."

This bill is permissive, it is not mandatory. I feel that as good as the Stockmeister bill is—and I believe that 1285-B is a good bill—that this would make it an even better bill and I urge the adoption of this amendment.

THE PRESIDENT: The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President, the Committee has considered some suggestions that the limitation of the sale and other disposition of detached parcels be increased from the existing ten provision to one hundred acres. There are approximately two hundred and twenty parcels of ten acres or less, of which ninety are in the Adirondacks and one hundred and thirty in the Catskills. The ten acre authority has existed for ten years, and only twelve acres of land have been affected. In fact, only a parcel of one half acre has been sold in the last ten years. The difficulty is not the constitution, but the public land statute requiring a survey of each parcel before sale or other disposition. This has proved impractical, but it is not necessary to change the constitution to make the present provision effective.

The joint legislative committee on Conservation, Natural Resources and Scenic Beauty, is already at work on a suitable bill to be introduced at the next session, which I am sure will clear up this difficulty. However, it is certain that taking care of the small parcels which have caused the Conservation Department the most headaches will take four or five years at best.

The committee recommends that the ten-acre limitation be retained for the present until our experience with the disposition of the small parcels can be evaluated. If we have any state forest preserve parcels left at the end of that period, more detailed study can be given to the study of disposing of parcels between ten and one hundred acres.

For this reason the committee has rejected raising the limitation to one hundred acres at this time. Also, while reading telegrams, I have a telegram here from the Empire State Chamber of Commerce, which opposes any weakening of the forest preserve article in the state constitution, and this would weaken it. Signed by John J. Roberts, Executive Vice President of Empire State Chamber of Commerce.

MR. ADAMS: Mr. President, may I speak with reference to this question and tell you something about detached parcels? There are several reasons why it might be desirable for us to dispose of a substantial number of the detached parcels. The first is the question of access. In many cases, the areas, whether they are one acre or ninety-nine or one hundred and one acres, are completely surrounded by private land, there is no access by public roads, no right of way for access by private individuals. Those lands cannot be used even by a hunter or anyone else who would trespass over land. As I said before, in many of the cases there are no roads, either public or private or truck trails. The property, then, is completely landlocked by individuals.

Now, on the table that you have just had distributed to you, you will find that there are altogether four hundred and fifty-six detached parcels outside of the blue line but within the fourteen forest preserve counties and they constitute twenty-one thousand one hundred and sixteen acres out of a total, not of two and a half million, but now the figure is two million six hundred and fifty thousand acres of land in the forest preserve. So there are twenty-one thousand acres in four hundred and fifty-six parcels.

The Stockmeister proposition, which has to do with re-incorporating the present provisions in the constitution, would provide for the sale of five hundred and fifty of those two million six hundred and fifty thousand acres, and you will see that is the bracketed figure. There are altogether two hundred and twenty-three parcels of land less than ten acres with a total acreage of five

hundred and fifty, so you see those are not much more than an average of an acre and a half or two acres apiece.

Now, in addition there are areas of acres that go from ten acres to ninety-nine, and you will see there, there is a total of one hundred and fifty-six, some ninety-four in the Adirondacks and sixty-two in the Catskills. Those add six thousand and forty-five acres. So that starting out with the three hundred and thirty-three acres now permitted under the present constitution, we would, by adding the additional one hundred and fifty-six parcels, add six thousand and forty-five acres that could be utilized and made available for filling in the patchwork in the forest preserve counties themselves. Thus, you would have a total of three hundred and eighty-nine that would be available.

Now, something about the detached parcels themselves. It has already been indicated that we have no title to many of them. As most of you know, the tax titles some twenty years ago were not as specific as they are now, and there were many parcels that were on the tax roll twice so that very often some of the parcels that the state owns or thinks they own, they find somebody else is using. We cannot find the lands themselves because the descriptions were so vague and this has had something to do with the proposition of the non-salability of these first ten acres or less parcels. But we do have some very peculiar situations because some of them we don't own at all. For example, in the town of Forestburg in Sullivan County we have an undivided one-half interest in one hundred and sixteen point forty-two acres. Now, that undivided half interest, the owners of the other half interest, are occupying it; they have a house and a hostelry on it and there are other private trespassers who have come on the land itself and use it. So that really when we call this a detached parcel we have nothing that we could get rid of. We might just as well sell the other undivided half interest, or let someone use it, or else buy the other half if we need to, although I think we should concentrate on our purchases within the blue line itself.

In the County of Franklin, Town of Branden, there are many, many lots all over 12 acres, a total of 255 acres in that town consisting of some 6 lots and none of them are available to public access and they all are adjacent to some of the reforestation areas or could be better used for multiple purpose uses, such as the reforestation, or other purposes or sold to someone who could use them. The same is true with some three lots in the Town of Clinton and four lots in the Town of Morris in the County of Clinton.

There are many instances, but as we go through the list, as you can see, we are not talking about very many parcels. If we have a total of 456 parcels, and we are talking about 6,600 acres, and that is all that will be possible to be sold under this proposition of Mr. Pomeroy's. We really are not talking about a great deal, but sometimes it is more important to get rid of a 101-acre parcel and buy something within the Blue Line to fill in the patchwork than it is to try to sell something which in ten years we haven't sold because we had no title other than the tax title which we could convey. There is some title to some of the others. Let me tell you about another strip of land that we have that consists of an abandoned railroad 66 feet wide and  $2\frac{1}{2}$  miles long, none of which joins any public land and no way to get on it. This parcel, a portion of it was sold—there was a question of whether it might be legally because it was a portion of some 9.75 acres out of a total of 20 that was sold and the whole thing was contiguous acreage, so that there may be a question even on the sale of the 9.75 which has taken place. At any rate it is not likely that a strip 66 feet wide and  $2\frac{1}{2}$  miles long could be a part of Forever Wild if it is not contiguous and could not be used by anyone else.

Again, a situation concerning an area somewhat slightly larger than the hundred acres but pertaining to an area where we had an abandoned mine with very dangerous shafts. The Department has had several opportunities to sell this for either storage of underground refrigerated items or for the growing

of mushrooms, but they were unable to do so. This is a very dangerous situation. We have no access to it, it could not be used by anyone else.

These are some of the typical examples of the type of things that we call Forever Wild. They are not Forever Wild. We have many instances where they not only have been used as a dump, but trespassers have come on and built their cabins and stayed on them but because the State didn't have enough title, we had no right to kick them off.

Now, this is what we are trying to say; there should be some liberalization of the areas outside the Blue Line. Some of them are 25 or 30 miles from the park areas of the Adirondacks and the Catskills and, as indicated, are parks close to municipalities where they would by no stretch of the imagination be Forever Wild. I do think that we should even go further than the 100 acres and to my mind release all of them outside of the Blue Line and concentrate on those within, but this amendment is limited to the 100 acres and I support it wholeheartedly.

MR. LEVITT: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Levitt.

MR. LEVITT: I would like to call Mr. Adams' attention to the remark made by Mr. Spisiak in presenting his amendment a little while ago, and I quote. "The difficulty of disposing of these detached parcels can and should be handled by the Legislature."

I agree with Mr. Spisiak. In the past ten years our State has been unable to dispose of more than 1/100th of the properties that have been available to them because of this requirement for survey. I think this is a legislative matter. Mr. Spisiak, I agree with you in this regard, we need not amend 1285-B to handle the problem of sale of the detached parcels, and for this reason I would oppose this amendment.

MR. ADAMS: Mr. Levitt, will you yield to a question?

MR. LEVITT: Yes.

MR. ADAMS: As to those parcels over the ten acres but less than 100, would you have any objection to the release of those in view of the fact that there may have been legal obstacles, such as statutory, that have not permitted the sale of smaller areas of less than the 10 acres, but would it not seem feasible that some others that were not truly Forever Wild, whether they were 11 acres or 99, could properly be sold providing the State had no use for them and they could not be used for other public purposes?

MR. LEVITT: I think it is a matter of order and precedence here. I think the Legislature should first remove this requirement for survey and then as they see fit we can look at it again at that time.

MR. BURNS: Will Mr. Levitt yield for a question?

THE PRESIDENT: Mr. Levitt, will you yield to Mr. Burns?

MR. LEVITT: Yes.

MR. BURNS: Mr. Levitt, is it not a fact that this Constitution which we are now considering is not just for tomorrow but for 20, 30 years? What Mr. Pomeroy suggests, which has already been approved by a number of Conservationists seems to make good sense. It simply says there is authority for the State to dispose of parcels not just of 10 acres, not to take 10 nines for 90, but perhaps to dispose of one 90-acre parcel. And I don't think this should be clouded in what has been suggested previously by Mr. Stockmeister. He makes sense. Let the Legislature remove some of the impediments to dispose of some of these parcels now called Forever Wild, which are depositories for abandoned

automobiles or are dumps or may very well, Mr. Levitt, be used for recreational purposes because they are in towns or in villages outside the Blue Line.

It seems to me that the State will very carefully review all 456 parcels to see that none of them are disposed of that should be held. I don't think we are talking about the amendment which was approved by the people 10 years ago, but rather we are talking about an amendment that makes possible the disposal of an undesirable piece from the State's point of view, and I would hope that the disposal of a piece that is not useful to the State might have had that money put to acquiring other pieces within the Blue Lines to make a better Adirondack Park or a Catskill Park. I suggest to all members of this House that the change which Mr. Pomeroy suggests is to give a little bit more flexibility to dispose of undesirable parcels which may then make for a more useful use of all of these parcels of land. I suggest that it is a good amendment, it should go into the Constitution for the years ahead.

MR. LEVITT: I don't quite understand the question that I am to respond to, but I think I can rise to the occasion. There are approximately 220 parcels of 10 acres or less, of which 90 are in the Adirondacks and 130 are in the Catskills, and the 10-acre authority has existed 10 years and only 12 acres of land has been affected, 12 acres in 10 years. In fact, only the parcel of one-half an acre has been sold in the 10 years. The difficulty is not, I suggest, the Constitution, but a public lands law statute requiring a survey of each parcel before sale or other disposition. This has proved impractical, but it is not necessary to change the Constitution to make the present provision effective.

Now, a number of people speaking to this amendment have suggested the fact that some conservation groups favor this. I admit that, but I think you would also have to agree that a large number of groups, group members and heads of groups, oppose this notion, and I think that it is a relatively inconsequential amendment to cloud the issue in terms of the total article. So that I would, in answer to your question, say no.

THE PRESIDENT: The question occurs upon the adoption of the amendment. The Secretary will call the roll. A slow roll call is asked for. Call the roll.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 73; noes, 95.

THE PRESIDENT: Defeated.

The Chair recognizes Senator Brydges for the purpose of an amendment.

MR. BRYDGES: Mr. President, because most of the amendments proposed today have broken down along party lines, I thought I might propose one which I understand to be generally acceptable to all the delegates.

This matter was called to our attention by Governor Moore at a minority conference this morning in connection with a portion of the proposal of Mr. Stockmeister.

Very briefly, Mr. President, under the existing section of the Constitution, in the instance of the construction of reservoirs for the provision of municipal water supply, there is a provision that whoever does the construction, whether it be a regulating district or no, to assess a portion of the cost against not only the municipality but against private lands and against other agencies of government which might be benefitted.

In drafting this proposal, the Committee has confined the chargeback solely to municipalities, unless there be instances in which private interests might be collaterally benefitted or other governmental agencies. My amendment would have the effect of restoring the language to its present constitutional language, the right to assess against private lands and against other public agencies besides municipalities.

I offer the amendment and move its adoption.

THE PRESIDENT: Mr. Stockmeister, would you accept the amendment?

MR. STOCKMEISTER: Mr. President, I accept the amendment and am very grateful to Governor Moore and Senator Brydges and am willing to admit our mistake.

THE PRESIDENT: On the question of the adoption of the amendment by Senator Brydges, all in favor indicate by saying aye; opposed no.

The amendment is adopted.

Are there any other amendments to be offered on this bill?

MR. ADAMS: I rise to present an amendment, a simple one. I also hope that it will not have concern or be determined along party lines or however we may feel about the Forest Preserve. The amendment—

THE PRESIDENT: I think there was a slow roll call on all the others, and the roll call stands on the record. I wish we wouldn't characterize.

MR. ADAMS: The proposal adds on page two, line 22, after the words "forest preserve" some five or six lines reading as follows: "Provided further that no sale, exchange or other disposition shall be made unless it has been determined by the State that such lands are not necessary or useful for conservation, parks or recreation purposes."

This particular language would have been more meaningful had the previous resolution, amendment, pertaining to the increase to a hundred acres been adopted; however, it is just as meaningful at the present time when we think in terms of the disposal of the ten-acre parcels, that the State should look first before it is disposed of to a private individual. The burden of proof has been put on the State to determine that it is not needed for any other useful state purposes. We have already been advised at our public hearings of the great necessity of other people who wanted to use some of the land outside. People spoke to us about the need of—

MR. STOCKMEISTER: We will accept this amendment.

THE PRESIDENT: Mr. Stockmeister.

MR. STOCKMEISTER: We will accept this amendment.

THE PRESIDENT: The question occurs upon the adoption of Mr. Adams' amendment to the proposition as amended by Senator Brydges. All in favor indicate by saying aye. Opposed nay. The amendment is adopted.

MR. SHAPIRO: May I offer an amendment and just say a few words in support of it? I hope that Mr. Stockmeister will be as kind to me as he has been to the two Republicans on the last proposals.

THE PRESIDENT: I doubt it.

MR. SHAPIRO: On page two, line 25, you will find the words "two successive regular sessions." The whole section reads as follows: "Any other use or disposition of land hereafter authorized by two successive regular sessions of the Legislature and approved by the people." If this was a provision for a separate elected legislature, it might make some sense, but in view of the fact it speaks of two successive regular sessions, it simply means approval by the same people all over again, and I see no reason for it.

So I suggest that we delete the words "two successive regular sessions" and that it read "any other use or disposition of land hereafter authorized by this Legislature and approved by the people."

I ask Mr. Stockmeister to accept the amendment.

MR. STOCKMEISTER: Mr. President, first of all, what this will do and I agree with you it will be the same legislature; however, when it is passed, they

will have a year in which to think about it, and people can be heard, so for this reason I am opposed to one legislature.

MR. BRYDGES: Mr. President, I rise to close debate for the minority and I am in opposition to this amendment.

THE PRESIDENT: The question occurs upon the adoption of the amendment offered by Judge Shapiro to the proposition as amended by Senator Brydges and Mr. Adams.

MR. WEINSTEIN: Mr. President, to quote that distinguished jurist of my county, Judge Shapiro, he says "Some of my friends are for it, some of my friends are against it." I am for my friends.

THE PRESIDENT: All those in favor of the amendment as offered by Judge Shapiro indicate by saying aye. Those opposed, nay. The amendment is defeated.

Mr. Bensley.

MR. BENSLEY: Mr. President, I rise to amend proposition 1285-B.

THE PRESIDENT: As amended by Senator Brydges and as further amended by Mr. Adams, I trust.

MR. BENSLEY: Right. On line 14, section two of the proposition the word "acquisition" is removed and replaced with the word "use." On line 15 before the word "lands" insert the words "forest preserve." On line 18, before the word "lands" insert the words "forest preserve."

Thus the clause commencing on line 14 and reading "The acquisition and dedication by the State of lands within forest preserve counties, but outside the Adirondack and Catskill Parks as now fixed by law for the purposes of forest and wildlife conservation" is to be amended to read as follows, "The use and dedication by the State of forest preserve lands within forest preserve counties but outside the Adirondack and Catskill parks as now fixed by the law for the purposes of forest and wildlife conservation."

The forest preserve, as we well know, is made up of well over two million acres of state-owned land within the Adirondack and the Catskill parks, or what is commonly called the blue line. It also encompasses under present definition and statute the small quantity by comparison of land outside this blue line, or outside the Adirondack and Catskill parks but within what are called forest preserve counties. This land outside the blue line but within the forest preserve counties, and therefore by definition, forest preserve lands consists of approximately 21,000 acres scattered in many parcels from one-half acre to 790 acres around the outside of the periphery of the blue line. Much of this land included in these many detached parcels outside the blue line is far from wild forest land and is not in any immediate proximity to any substantial strips of wild land. Much of it is made up of extremely small parcels and some are parcels which do not lend themselves to true forever wild purposes. However, they are, to some degree, forest and wild land, though scattered, and it is my intention by offering this amendment to make them more useful for conservation purposes by permitting their use for forest wildlife conservation.

Section two, paragraph a, now reads in effect that land within the forest preserve counties, but outside the Adirondack and Catskill parks, may be acquired and dedicated for forest and wildlife conservation purposes. This indicates that the present land owned by the State in forest preserve counties outside the boundaries of the two parks, the blue line, would not be available for forest and wildlife conservation, but only land acquired in the future by the State and so dedicated. Information brought to my attention through much research and inquiry has convinced me that the scattered parcels of State land within the forest preserve, but outside of the blue line and thus away from the

vast majority of forest preserve land, is in many cases highly suitable for some forest and wildlife conservation practices. As a matter of fact, such practices on these lands in question would benefit them and make them more truly conservation land and not decaying and eroding parcels.

For instance, some scattered parcels outside the blue line around the northern arc of the Adirondack Park boundary would particularly lend itself to deer browsing and could very readily serve as deer yards for the preservation and conservation of our northern deer herd in the State.

Forest and wildlife conservation do not in anyway imply state or private exploitation. They rather provide a better habitat for the rabbit, the deer and many, many treasured animals and birds that grace our state. Is not their preservation an important facet for the preservation of our entire heritage? Forest conservation implies the improvement of the land in this area so that these parcels that I spoke of outside the blue line could more readily be retained as useful woodland and forest. No lumbering for commercial purposes is in anyway implied, but some thinning of forests to make it more adaptable so the deer and the fox can breed and feed is intended.

Why not use these twenty-one thousand plus scattered acres for this purpose and not put this purpose off until new lands are acquired outside the blue line but in forest preserve counties.

There is no intention by this amendment of in anyway removing the prohibition of leasing, selling or exchanging the lands and it shall remain state land by this amendment forever.

There is no intention of populating the land or destroying it but rather using these detached parcels for forest and wildlife conservation.

Additionally, we have inserted in this amendment in referring to the lands the words "forest preserve lands" and "forest preserve counties." This has a specific purpose. The research and information before me tells me that the addition of these words are to assure the continued taxable status of the lands to the various counties and other taxing districts and authorities within which they lie. As you know, the State of New York pays real estate taxes on forest preserve lands and by these words of art this protection to the fiscal structure of the various counties, towns and school districts within which these lands are situated will be protected.

There is serious doubt that this would be so without the addition of words "forest preserve" before the word "land" on lines 15 and 18.

It is with a deep and sincere desire to promote conservation of forest and wildlife in New York State now and not sometime in the hoped for future, and to protect the taxing districts within which the state may carry out this worthwhile work that I offer this amendment to Section 2, paragraph a of proposition 1285-B and urge its adoption, for the benefit of the forest preserve, for the benefit of wildlife in our state, for the benefit of the people of our state, and for the promotion of conservation. It is offered further with a deep and sincere belief that it will strengthen for a long period to come the forever wild concept of our forest preserve.

Thank you very much.

MR. STOCKMEISTER: The committee considered this and voted it down and I urge the defeat of the amendment.

THE PRESIDENT: The question occurs upon the adoption of this amendment by Mr. Bensley. The Secretary will call the roll. Those who are opposed please raise their hands.

Will you take an "aye" and "nay" vote, Mr. Brydges?

MR. BRYDGES: Yes, please.

THE PRESIDENT: The question occurs upon the adoption of the amend-

ment. All in favor of the amendment indicate by saying "aye". Those opposed, indicate by saying "no".

The Amendment is defeated.

Are there any other amendments to be offered to this proposition?

MR. MATTHEWS: Mr. President, I know the hour is late but I have an amendment to the proposition that I would like to offer at this time. It is a very simple one, and it would change the wording on page 2, line 7, by striking out the word "three" and substituting in its place the figure "four".

In 1966 the State of New York received a report on the water resources potential of our state. The report was the most thorough and far-reaching in our history. The report concluded that in 1960 there was a deficiency in the New York City-Long Island region alone of fifty-nine million gallons per day. In 1970, in just three years, there will be a deficiency in Long Island-New York City of ninety-eight million gallons of water per day. In 1980 it will be one hundred eighty-four million gallons. In 1990 there will be a shortage of four hundred nineteen. In the year 2,000 it will be six hundred eighty-nine million gallons per day, and in the year 2010 eight hundred ninety-nine million gallons per day. In the year 2020, one billion one hundred fifty-three million gallons deficiency of water for New York-Long Island area.

These figures are conservative in that they concern only the water consumed and do not include the water necessary for stream flow to keep down saline content. It does not include water used to reduce the heat of discharged water, nor does it include any other proposed uses. These water deficiencies have to be made up somewhere, and the recommendation of the consulting engineers hired by the State of New York in this far-reaching survey was to go to the Adirondack mountains and to go to sites located in the forest preserve.

In referring to the upper Hudson sub-basin, the report said, and I am quoting: "Because of the forest preserve, the northern part of the sub-basin has had only minor development for storage and remains a region where potential storage reservoirs can be constructed with a minimum of relocation or disruption to man-made developments."

In the Adirondacks 56 sites were selected as meeting engineering criteria. Secondary screening and subsequent field reconnaissance resulted in selecting the 10 best sites, 8 of which involve the taking of forest preserve land.

Serious problems would occur to the plan to utilize the reserves in the forest preserve which are part of the Hudson River system if the Wild Rivers Bill now pending before Congress is enacted into law. That bill calls for the inclusion of the Hudson from its origin to the vicinity of Luzerne, which is due west of Glens Falls. Other tributaries of the Hudson included for study in the Wild Rivers Bill are the Boreas, Indian and Cedar.

This bill if passed by Congress would put the rivers under immediate Federal protection and would prohibit the construction of dams on the rivers unless specifically allowed by Congress. The engineers for the water study survey in a letter directed to the Board of Water Supply of the City of New York and the Department of Public Works of the County of Westchester said in part as follows, and I am quoting: "With regard to the limitation of 3% on forest preserve lands that can be used for municipal water supply in the waters of the State, we believe that the 3% would permit the development of supplies we are presently contemplating, but that ultimately it might prove inadequate when other needs are considered or developed. We therefore also suggest that the delegates consider the establishment of a higher figure to permit the future use of a greater portion of the forest preserve for the purposes noted above."

Adequate water is essential to the well-being of all our citizens. It is vital to economic growth. The time is now to begin planning for an abundant supply as the needs and deficiencies become more pronounced. An ample supply cannot come into being in a few years. We cannot wait to use the 3% before asking for

more acreage, for reservoirs, engineering, dams, acquisition, rights-of-way are something that do not occur overnight.

Those that favor retention of the status quo in the forest preserve and who are opposing this extension of acreage are doing an injustice to the Forever Wild concept. Should there be a serious shortage of water because of constitutional restrictions, I feel the people will vote water first and aesthetics second and perhaps put the whole forest preserve in jeopardy.

I therefore urge the adoption of the amendment.

THE PRESIDENT: The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President, Mr. Matthews appeared before the Committee and told us of this report but we never saw it. No one has seen it so far as we know. It is filed away and not available to the Convention. We are asked to change the Constitution on the basis of a secret report. Can you imagine what the people will do when we change the Constitution for reasons we can't tell them, for reasons of secret reports?

I ask for the defeat of the amendment.

MR. MATTHEWS: Will Mr. Stockmeister yield?

THE PRESIDENT: Will you yield?

MR. STOCKMEISTER: Yes.

MR. MATTHEWS: Have you ever attempted to get hold of this report?

MR. STOCKMEISTER: After I asked you to get the report and you told me you were going over to look at it, you never came back.

MR. MATTHEWS: I spent 5½ hours redoing this. The figures which I quoted here concerning the present deficiency in the water needs of Long Island and New York City prepared by the engineers to the Board of Water Supply of the City of New York indicate quite amply that there is a water shortage now and it will be necessary to go into the Adirondacks and have the 10 reservoir sites proposed and the acreage allocated to it and the amount of gallonage. Certainly if I could spent 5½ hours reading the report I believe that members of your committee staff could also have gotten it, if you are desirous of obtaining the information.

THE PRESIDENT: Mr. Levitt.

MR. LEVITT: Can Mr. Matthews tell us the sponsorship of this report, where the report could be found?

THE PRESIDENT: Mr. Matthews.

MR. MATTHEWS: Very pleased to, Mr. Levitt. The primary report was a very thorough study made under the direction of the Division of Water Leases of the New York State Conservation Department. There were a number of engineers and the State was divided into four districts, but the engineers having the overall responsibility for correlating the report are the firm of Metcalf, Eddy, Hazen and Sawyer and Malcolm Perine. Now those which had to do with the Hudson water-shed which embraces the Counties of Suffolk, Nassau, the five Counties of New York, Rockland, Westchester, Putnam, Orange, Ulster, Dutchess, Greene, Columbia, Albany, Schohaire, Rensselaer, Schenectady, Montgomery, Herkimer, Oneida, Fulton, Saratoga, Washington, Warren, Hamilton and Essex County—areas involving 70% of the population of our State—the engineers on that were Timmons-Abbott, McCarthy-Stratton, Camp, Dressen and McKee, Leggett, Brashers and Graham. They were a series of engineering firms used to come up with the report.

MR. LEVITT: Mr. President.

THE PRESIDENT: Mr. Levitt has the floor.

MR. LEVITT: I am not personally familiar with all the names you have just mentioned but my general feeling is that since in the past 30 years we have used only  $\frac{1}{4}$  of the 3% that has been allotted to us for this purpose that in the absence of some compelling reasons to do otherwise, I would not favor this change in the proposition.

THE PRESIDENT: Judge Goldman.

MR. GOLDMAN: Will Mr. Matthews yield?

THE PRESIDENT: He yields.

MR. GOLDMAN: I assume the delegates are without any information on this since even the committee hasn't got it. I wonder if your figures, particularly the year 2,020, if the effect of the desalinization process was given any consideration and if we ought not at this point to lay this aside.

MR. MATTHEWS: I would like to quote from the report if I may. This is a direct quote, "The cost per million gallons of potable water delivered to New York metropolitan area ran from \$80 to \$140 per million gallons. Since the lowest present projection of cost per million gallons of desalinated water is \$210, its use will not be competitive for this area in the foreseeable future."

MR. POMEROY: Mr. President.

THE PRESIDENT: Mr. Pomeroy.

MR. POMEROY: Mr. President and Ladies and Gentlemen of the Convention: I would like to say that this attempt to allocate 6% of the forest preserve for reservoirs is a very serious—4%, any increase, is a very serious increase; that the answer to water shortage in the future may lie very largely in conservation of water, its reuse or its metering or other conservation measures like that. I don't think that this proposition has had nearly enough study and I certainly urge its defeat.

THE PRESIDENT: On the adoption of the amendment—

MR. SPISIAK: Mr. Chairman, one word?

THE PRESIDENT: One word, sure.

MR. SPISIAK: One minute if you please?

THE PRESIDENT: Are you bargaining with me now? A half minute.

MR. SPISIAK: You have already used half of my minute in getting it.

All I can say is that the emphasis on water has been misplaced. There is no shortage of water available to New York City, it is only a question of the lack of the polluted Hudson which goes by and could amply supply many times the amount of water if cleaned out. We need to emphasize the fact that we have polluted water. We need clean water, we don't need to worry about the Adirondack water supplying us. So that I am very much opposed to this amendment on the basis of the fact that it would permit additional pollution to occur because there will be no emphasis needed to cleaning up the water we have.

THE PRESIDENT: The question is on the adoption of the amendment offered by Mr. Matthews to the proposition which was amended by Senator Brydges and again by Mr. Adams. All in favor of the amendment indicate by saying aye? Those opposed to the amendment indicate by saying no?

The amendment is defeated.

MR. MATTHEWS: Mr. President.

THE PRESIDENT: Do you have another amendment? Go ahead, Mr. Matthews.

MR. MATTHEWS: I propose to require the State at all times to operate the reservoirs which would allow the discharge of water from the reservoirs of the forest preserve into the streams and into the water courses either within or without the forest preserve and during transit the water so released shall not be diminished. The water studies which I previously referred to in the past year have advocated such a proposal. Since at the present time there exists a very real doubt if the discharge of collective waters is strictly within the Forever Wild language, in the recent water studies which I refer to the construction of an aqueduct from Corinth to New York City by a gravity tunnel, and Corinth is between Saratoga and Glens Falls, the difference in cost to the City of New York would be the sum of \$622 million as contrasted with the cost of building a tunnel from Hyde Park where the Hudson would be tapped and by their recommendations into New York City. The cost per million gallons to the residents of the metropolitan area would be \$95 per million gallons. The average cost now is \$80 so there would be over a doubling of the cost of water to New York City. The report of the consulting engineers went on to say:

“Also the diversion of water supply at Corinth would deprive the entire Hudson River downstream, Hudson River Valley downstream, to Hyde Park of the advantage inherent upon this flow in the river.”

The inclusion of the suggested language in the forest preserve article does nothing to offend the spirit of Forever Wild. It merely allows water to be transmitted above ground in streams rather than at great cost below ground in pressure aqueducts. It gives downstream users the opportunity to utilize the water before returning it to the river. Great savings will result to the city of New York and its inhabitants and no harm would occur to the forever wild provisions.

I, therefore, ask for approval of the amendment.

THE PRESIDENT: Mr. Stockmeister?

MR. STOCKMEISTER: Again, I ask urgent defeat of this amendment.

THE PRESIDENT: Mayor Corning?

MR. CORNING: This particular amendment is a highly complex amendment. It is something that has just been given to this convention very quickly and late in the day. I think that there is a real possibility that at a later time this amendment might very well be considered on third reading, but it is so complicated that I recommend its defeat at this time.

THE PRESIDENT: Mr. Pomeroy?

MR. MATTHEWS: On the basis of Mayor Corning's suggestion I will recall the proposed amendment at this time.

THE PRESIDENT: Do you say whether you will withdraw it or not?

MR. MATTHEWS: I will withdraw it, and I intend to bring it upon third reading.

THE PRESIDENT: The amendment offered by Mr. Matthews is withdrawn. Are there any other amendments?

If there are no other amendments, I will order that the proposition before us be reprinted for action tomorrow, for final action on the proposition. Committee notices?

THE SECRETARY: The Committee on Economic Development—

THE PRESIDENT: Just a moment. Mr. Mangano?

MR. MANGANO: Members of the Convention—

THE PRESIDENT: Can we have order for just a moment?  
Mr. Mangano.

MR. MANGANO: Mr. President and members of the Convention, at this time I arise to present to this Convention the son of a very distinguished gentleman under whom I had the privilege and honor to serve, your last Democratic predecessor and the Speaker of this House, and I refer to Assemblyman Stanley Steingut, the County leader of the greatest county of the State of New York.  
(Applause)

THE PRESIDENT: Committee notices.

THE SECRETARY: The Committee on Economic Development will meet tomorrow in the Assembly Chamber at 8:30 A.M.

The Committee on Home Rule will meet tomorrow in the Assembly Parlor at 11:00 A.M. and also Room 450 at 7:30 P.M.

The Committee on the Legislature will meet Wednesday, August 2, Room 409, at 9:00 A.M.

The Committee on Local Government and Home Rule, Wednesday, August 2, in Room 436, at 11:00 A.M. and Room 430 at 7:00 P.M.

THE PRESIDENT: May we have just a moment?

I understand that one of these committees, the very important committee on the Bill of Rights, will meet tomorrow morning at 8:30 in the Chamber.

Mr. Weinstein?

MR. WEINSTEIN: I now move that the Convention stand adjourned until tomorrow at 2:00 P.M.

THE PRESIDENT: So ordered.

(Whereupon at 7:17 P.M. the Convention was adjourned to Tuesday, August 1, 1967 at 2:00 P.M.)

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## TUESDAY, AUGUST 1, 1967

THE PRESIDENT: The Convention will come to order. Will the delegates please assume their seats?

REV. JOHN TRACY: In the name of the Father and of the Son and of the Holy Spirit. Come, Holy Spirit, fill the hearts of Thy faithful, and enkindle in them the fire of Thy divine love.

O God, who by the light of the Holy Spirit didst instruct the heart of Thy faithful, grant that by the same Holy Spirit, we may be truly wise and ever rejoice in Your divine consolation. Through Christ our Lord.

In the Name of the Father and of the Son and of the Holy Spirit, Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will read the journal of yesterday's proceedings.

THE SECRETARY: In the Convention on Monday, July 30—

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: I move we dispense with the further reading of the journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered.

Calendar of the day. Propositions on the order of second reading. The Secretary will read.

THE SECRETARY: (reading) 1335, Committee on State Finances, Taxation and Expenditures, a proposition to insert a section in the article on taxation in the proposed constitution, in relation to taxation of intangible personal property.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: August 2.

THE PRESIDENT: Lay it aside until tomorrow.

THE SECRETARY: (reading) 1336, Committee on State Finances, Taxation and Expenditures, a proposition to insert a section in the article on taxation in the proposed constitution, in relation to the power of taxation.

MR. GREENBERG: Tomorrow.

THE PRESIDENT: Lay it aside until tomorrow.

THE SECRETARY: (reading) 1285-C, by Stockmeister, a proposition to repeal article fourteen of the constitution, relating to conservation, and to insert in the proposed constitution a new article, in relation to the forest preserve.

MR. STOCKMEISTER: Ready.

THE PRESIDENT: Lay it aside.

THE SECRETARY: (reading) 1351, Rules (at the request of Committee on State Finances, Taxation and Expenditures), a proposition to insert a section in the article on taxation in the proposed constitution, in relation to exemptions from taxation.

THE PRESIDENT: August 2.

THE SECRETARY: (reading) 1352, Rules (at the request of the Committee on State Finances, Taxation and Expenditures), a proposition to insert a section in the article on taxation in the proposed constitution, in relation to taxation of intangible personal property.

THE PRESIDENT: August 2.

THE SECRETARY: (reading) 1354, Rules (at the request of the Committee on the Executive Branch), a proposition to repeal sections one through seven of article IV of the constitution, and to enact six new sections of article IV, in relation to the governor and lieutenant governor.

MR. BOTEIN: Ready.

THE PRESIDENT: On the lay-aside calendar.

THE SECRETARY: 1285-C, Stockmeister, a proposition to repeal article fourteen of the constitution, relating to conservation, and to insert in the proposed constitution a new article, in relation to the forest preserve.

THE PRESIDENT: The Chair recognizes Mr. Stockmeister.

MR. STOCKMEISTER: Mr. President, Fellow Delegates: After the long debate of yesterday, I think in deference to you, Mr. President, and the delegates, after numerous telegrams I received, I believe the time has come for no further debate but action on my proposal.

I urge its adoption.

THE PRESIDENT: Mr. Levy.

MR. LEVY: I was away from my seat for a minute. If I could break in and get unanimous consent to extend a welcome to a group of young people that has come here. I would like to introduce to you, and have you afford them the privileges of the Convention Chamber, a very young group made up all of senior citizens, who came here to show their interest in this Convention. They come from the Pelham Parkway community. They are under the guidance of Mr. Arthur Reamer of Bronx House Emmanuel, and they are all sitting behind you in the corner of the Convention Chamber, and I wish you would extend them a warm welcome.

THE PRESIDENT: The Chair is most pleased to welcome this group of senior citizens to the deliberations of this Convention and trusts they will enjoy the same.

(Applause)

MR. LEVY: I think it shows definitely a good trend when people like this are interested in our product and that we will do well in the election.

Thank you.

THE PRESIDENT: Does any delegate wish to be heard on the proposition of Mr. Stockmeister? Mr. Bensley.

MR. BENSLEY: Mr. President, Fellow Delegates: After the discussion yesterday, it is quite apparent how the majority feels.

I think I speak for most of the minority in that we did what we felt was most constructive. We feel that the amendments we proposed would have strengthened the forest preserve and in no way weakened it. This was our only and sole purpose of offering these amendments.

I for one will support the bill as it now reads, in a way reluctantly, just so everyone knows that there are those who don't join with the majority, who feel they still have a great love for this forest preserve we are trying to protect, and that is why I offer this statement.

Thank you.

THE PRESIDENT: Any other delegate wish to be heard?

The question now occurs upon the advancement of the said proposition offered by Mr. Stockmeister in its present form, 1285-C.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 178, noes none.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

THE SECRETARY: (reading) 1354 by Rules. A proposition to repeal Sections 1 through 7 of Article IV of the Constitution, and to enact six new sections of Article IV, in relation to the Governor and Lieutenant-Governor.

THE PRESIDENT: Judge Botein.

MR. BOTEIN: Mr. President, Fellow Delegates: The Committee on the Executive Branch is submitting an entire Article IV. A memorandum in support of this article as proposed has been distributed to every delegate I believe, yesterday afternoon.

I had hoped that there would be more time for the delegates to read and analyze the changes that are made in the existing Article IV with the help of the memorandum which I believe was so ably prepared by staff.

And if I am being unfair to them by proceeding at this time, because of the

nature of the calendar, I will be amenable to putting this over. Otherwise, I am prepared to move ahead.

THE PRESIDENT: May I ask if there is any delegate who feels that he wants more time to study the proposal that is before us now?

Judge Sobel.

JUDGE SOBEL: I want to submit an alternate article making substantial amendments to the article as reported by the committee. I would like an opportunity to do so.

THE PRESIDENT: You don't have such an article ready?

MR. SOBEL: I am introducing it right now. If I may, I would like to read it before I hand it up to the desk.

THE PRESIDENT: Well, since it is a new article, in other words, it is an amendment which will offer a new article in its entirety—

MR. SOBEL: Mr. President, I purpose to substitute my article, which is a readable and organized article, for an article which I consider to be completely disorganized.

MR. BOTEIN: Mr. President.

THE PRESIDENT: Judge Botein.

MR. BOTEIN: I might state that there is no dispute between all of the other members of the committee and Judge Sobel, as I recall it, as to the substance of the changes made in Article IV.

Judge Sobel is the only dissenting member of the committee as to the article in the form presented by the committee and distributed, as I said, to every delegate to the Convention.

I might offer this. Judge Sobel has had such a distinguished career as counsel to a predecessor of yours, as counsel to Governor Lehman, as a judge, has such a rich background and has such vast experience to draw from that regrettably, in my opinion, his passion for perfection causes us to differ at times as to verbiage.

I leave it to you, as I said, there is no difference—am I correct, Judge?

MR. SOBEL: Yes.

MR. BOTEIN: In substance. It is merely as to the form in which the article is presented, and I might say that the form has been informally approved, if not applauded, by the Bill Drafting Committee.

THE PRESIDENT: Is there any objection to proceeding at this time?

MR. BRYDGES: No objection.

MR. PITARO: Since this is an important article, and we all have confidence and faith in the ability of the committee to put this article together, I think if I may suggest, Mr. President, that although the article may be discussed today, so we won't waste any time and for the purpose of voting intelligently, I think we ought to be given an opportunity to study it further, and if the debates are not sufficiently enlightening, perhaps put it over until tomorrow.

MR. BOTEIN: Shall I proceed?

THE PRESIDENT: Proceed.

MR. BOTEIN: For the benefit of those delegates who do not have the proposition and the memorandum explaining the changes, I will briefly go over the memorandum. At the outset, though, I wish to express my personal appreciation—and I know I speak for every member of the committee—for the marvelous

cooperation and collaboration that I, as chairman, have received from Dan Reidy, who is vice-chairman of this committee and that has been reflected in the helpfulness of the minority members. At most times, I might say at all time, up to now anyhow, majority and minority have been indistinguishable, and staff also—I know I speak for Mr. Reidy in expressing our appreciation to staff both for minority and majority in their efforts in preparing us and in preparing this document.

Now, in our opinion—and to this extent at least Judge Sobel and I are in agreement—the present provisions of Article IV are somewhat disorganized and not presented in logical order. From here on, I think Judge Sobel and I part company. We think—the committee thinks—the staff thinks that we have presented the material that is continued in the Article in logical and orderly form, and now I shall briefly set forth the following substantive changes.

One, we have eliminated the pocket veto. That is the provision that if the Governor fails to take action on a bill within the 30-day period that bill dies—does not take effect. In all fairness to the present Governor and all of his predecessors, at least in our generation, they never took advantage, they have not taken advantage of the pocket veto, they have always affirmatively approved or vetoed. But in order to insure this prospect in the future, we thought it would be safer to place it in the Constitution.

Now, the present Constitution provides that if the Governor is unable to exercise his powers and duties, the duties of Governor devolve in the following order. Lieutenant Governor, Temporary President of the Senate and Speaker of the Assembly. The Legislature may provide for the devolution of the duty of acting as Governor when all four of the named officials are unable to act. Of course, it is a most unlikely prospect and one that to my knowledge has never occurred in the history of this State. However, the present constitutional language is unfair as to whether the Legislature can provide for determination of disability, and so the proposition as presented would clarify this by expressly authorizing the Legislature to provide for such a determination; namely, a determination of disability. We thought it was more expedient to leave it in this fashion, rather than to try to spell it out as the presidential succession provisions are spelt out in the latest amendment to the Federal Constitution.

Now, the present constitution requires six lines to deal with pardons for treason, although no one has ever been convicted of treason in the history of the state, and as of September 1st of this year under the recently up-dated Penal Code, treason will no longer be a state crime. It should also be pointed out that the recent Supreme Court decisions have emphasized that treason can no longer be a state crime. The reason for this is that treason is legally defined as aid and comfort to the enemy in time of war and since the national and not the state government engages in war under the United States Constitution, treason must be a national crime. In any event, the proposed change in no way limits whatever power the Legislature may have to make treason a crime. It merely simplifies the procedures for pardon in the unlikely event that it is made a crime and someone is convicted. Then the committee would like to emphasize that this change in no way affects the procedures for pardoning incitement to riot or sedition, both of which remain state crimes. Of course, now, the Legislature can pardon for treason, and if treason ever does become a crime again in the lexicon of the state, the Governor, with the consent of the Legislature, can pardon.

The present constitution allows the Legislature to prescribe the manner for applying to the Governor for clemency. No such standards have been adopted and the authorization to adopt them has been eliminated in our proposition as unnecessary and as in conflict with the basic principle contained in the present constitution.

Next, the present constitution accords the Lieutenant Governor a casting vote in the Senate. Now, casting may be interpreted to mean either tie-breaking or tie-making and it is somewhat foggy, so to eliminate possible confusion, the word

“casting” is changed to tie-breaking. This was recommended to our committee in his testimony by Lieutenant Governor Wilson and we have adopted his recommendation. This proposition would not change the existing constitutional provision, of course, that the Lieutenant Governor has such a tie-breaking vote only on matters not including the passage of bills. Now, of course, we have, in the nature of our conferences, rejected a number of projected changes. We have rejected a number of proposals related to the subject matter of article four and chief among them are the following: one was a group addressed to the qualification, manner of selection and length and number of terms of governor and lieutenant governor. The proposals were introduced both to raise and to lower the present requirements of thirty years of age, five years’ residency in the state. The committee felt strongly that such changes were neither necessary nor desirable. Also, the legislative powers of the Governor, including the power to call and prescribe the agenda for special legislative sessions was considered. The period of time within which he must act on bills, ten days during sessions, thirty days after sessions and the majority necessary to override a veto, and no changes were adopted in those areas. What might be of special interest to this Convention was the fact that the committee unanimously voted to retain the present limitation on calling special sessions and determining their agenda. In other words, that power or those powers are still reposed in the Governor, and I understand that Judge Shapiro’s committee on the Legislature is in accord with that determination. This, incidentally, was supported by Governor Rockefeller in his testimony before us and he was most convincing.

There were proposals to provide in the constitution that the Governor has the power of amnesty as well as clemency. Amnesty, which, of course, pardons an entire class of offenders, it was felt, was essentially a question of policy and should be resolved by both the Governor and the Legislature, as they can do in the future without constitutional provision.

Now, there were a number of proposals to establish in the Constitution a prescribed procedure for determining the existence and duration of gubernatorial disability. The committee rejected detailed constitutional provisions for determining disability because it was thought that such provisions can never be drawn carefully enough to take into account all future situations. Instead, the power to determine disability, as I said before, was lodged in the Legislature which can act, if an occasion arises, or provide in advance for such a contingency. And then there were proposals—and this caused considerable debate within the committee—to require the Governor to act as Governor while outside the State. Several proposals were made, most of them based on a Federal analogy. After carefully examining the issues the committee felt that present arrangements which provide for the power to devolve upon the Lieutenant Governor this status, had worked well and they should be retained.

In general, regarding all areas of proposed change, the committee determined that existing provisions were adequate, had proven their workability and should not be altered. I might state that the present Section 8 of Article IV which relates to the filing of departmental rules and regulations has been by indirection excised because we think it more properly belongs in Article V, and it is still the subject of hot debate in our committee.

This, Mr. President, in essence is the substance of the proposed Article IV. I do not believe that it is as controversial as the proposed Article V which we hope to present shortly which will contain not only the executive reorganization provisions which were previously advanced to third reading by this distinguished body, but it will also contain the provision for a Department of Criminal Justice and the highly controversial matters of administrative rules and procedures. Thank you.

MR. DESMOND: Will Justice Botein yield for a question?

THE PRESIDENT: Judge Botein, will you yield to Judge Desmond?

MR. BOTEIN: Certainly.

MR. DESMOND: Two questions. First, as to the so-called pocket veto elimination. Do you not have to insert something positively to produce the opposite result?

MR. BOTEIN: No, because it falls—

MR. SHAPIRO: Line 17, page 2.

MR. DESMOND: Well, that deals with a separate situation, I thought.

MR. BOTEIN: Yes, I believe there is no question that the provision that in which case it shall become a law unless disapproved by the Governor within 30 days after adjournment.

MR. DESMOND: Very well, so much for that. Another question. I didn't quite understand what you said about the change in the tie-breaking power of the Lieutenant Governor. Did you say—perhaps I misunderstood—that this does not apply to action on bills?

MR. BOTEIN: It does not apply to action by bills, it doesn't apply presently to action by bills.

MR. DESMOND: What does it apply to?

MR. BOTEIN: It applies to procedural matters and the change is this; that there was some question as to whether they could not create a tie in that category of procedures.

MR. DESMOND: Thank you.

MR. BOTEIN: Thank you.

THE PRESIDENT: The Chair recognizes Mr. Bartlett.

MR. BARTLETT: Will Judge Botein yield for a question?

THE PRESIDENT: Judge Botein, will you yield to Mr. Bartlett?

MR. BOTEIN: Yes.

MR. BARTLETT: Judge Botein, on page 5 of the bill you provide for the devolution of duties as Acting Governor upon the Lieutenant-Governor and the language is, "The Legislature may provide." Am I to understand that would be by statute?

MR. BOTEIN: You understand correctly.

MR. BARTLETT: It is not your intention that they do so by joint resolution?

MR. BOTEIN: No.

MR. BURTON: Mr. President.

THE PRESIDENT: Mr. Burton.

MR. BURTON: Will Judge Botein yield for a question?

THE PRESIDENT: Judge Botein, will you yield to Mr. Burton?

MR. BOTEIN: Yes.

MR. BURTON: Section 1, line 5 in the sentence that discusses Commander-in-Chief of the Military and Naval Forces, is it the intention of the committee that this shall also include the Civil Defense agencies of the State?

MR. BOTEIN: This is lifted in haec verba, I believe, from the present Constitution and it was the intention of the committee that he should retain whatever powers he presently has.

MR. BURTON: So there is no actual determination specifically as to Civil Defense agencies. Is that right?

MR. BOTEIN: That is statutory and he has it now and it is up to the Legislature.

MR. REIDY: Mr. President.

THE PRESIDENT: Mr. Reidy.

MR. REIDY: Speaking for the minority in support of this proposition, I would say this: as Judge Botein has so ably demonstrated, this is the joint work of both sides of the aisle. It is presented as a committee proposition. We have discussed all of the elements that now go into the new proposed language. While there were minor disagreements on some of the points, I think I can safely say that this is a consensus, a well-arrived consensus where we think the few items that we have changed and the tidying up of the article will continue to show to the other 49 states the fact that the State of New York does have one of the finest articles and gives to the executive branch of government the great powers which are necessary to operate this State on an efficient, business-like basis.

I know that Article IV is the envy of many of the Governors of the other states because of the powers which we have justly granted to the executive, no matter whether he be a Democrat or a Republican. There is no need for me to repeat any of the items which Judge Botein has said. Perhaps just one thing on the article of treason—one question was raised; since it was in our Constitution, since the Constitution was established back in 1777, why is it now removed? The answer, I think, is simple. Because our Constitution was adopted ten years before the Constitution of the United States and for that reason at that time we did have to have a provision for treason in our present Constitution. But treason is not defined in the Constitution of the United States, it is a federal offense. There was only one case brought in the State of New York in 1814 and that was dismissed. It has never been used since. It is a complete violation of the Federal Constitution and we in the State do not handle treason cases any more.

Again, the minor disagreements, I think—and we did consider every proposition submitted to this committee having to do with any changes in Article IV, the executive branch of government. As you see, we have taken military and naval affairs which is in the present Constitution and constitutes only three sentences in the Constitution and combined them in this article in an effort which I don't think anybody will object to of simplifying and shortening the Constitution.

The question has been raised by one of my distinguished colleagues here whether we did consider civil defense. The answer is, yes, but we felt that under the present law it is so clearly defined that the Governor is in charge of civil defense, that there is no need to put this in the present Constitution. I would therefore recommend to the delegates on this side of the aisle that we support this proposition and say that our committee did support it in toto. Thank you.

THE PRESIDENT: Mr. Bloom.

MR. BLOOM: Will Judge Botein please answer a question for me.

THE PRESIDENT: Judge Botein, would you yield to Mr. Bloom for a question?

MR. BOTEIN: Yes.

MR. BLOOM: On top of page three, Judge, I am referring to the rights given

to the governor for pardons, commutations, et cetera—I would just like to know—I was not here and I heard that you mentioned the amnesty provisions which I put in a proposition for; I was wondering if you could please answer a question.

The Committee, I understand, took up these propositions, but what is the reason why it was not included in the proposition of yours?

MR. BOTEIN: Well, Mr. Bloom, the Committee considered your proposition, as Mr. Reidy indicated, very thoroughly. Amnesty is a provision that applies to an entire class. I believe at the last Legislature there was a bill but through providing amnesty in futuro for all first offenders, and I believe it was vetoed by the governor.

We felt, as members of the Committee that the Governor should not be vested with this enormous power, it should reside in the Legislature, which can still share it with the governor if it wishes. But we felt this would be too radical a departure from existing practice, with not; enough experience in any of the states to justify freezing it into a constitution, but it was a very thoughtful proposition you submitted and a very thought-provoking one.

MR. MANKIEWICZ: Mr. President, will the Judge yield for another question.

THE PRESIDENT: Judge Botein, will you yield to Mr. Mankiewicz for a question?

MR. BOTEIN: Yes.

MR. MANKIEWICZ: Judge, directing your attention to page three, line 18, in relation to the election of the Lieutenant Governor. "He (meaning the Lieutenant Governor) shall be chosen jointly with the governor for the same term by the casting by each voter of a single vote applicable to both officers"—is it the intent of this proposal that that stipulation of a single vote applicable to both officers shall apply both in primary and in the direct election?

MR. BOTEIN: Well, Mr. Mankiewicz, this was lifted, I think, precisely from the present provision in Section I of Article IV; and when Section I was enacted, I know there was no provision for a direct primary; and my own interpretation of this would be that it should apply to a primary election. I can imagine all sorts of confusions if a governor—if, let's say, Governor Reagan gets Lt. Governor Finch—which I know is running through your mind—now, I don't know how Mr. Reidy feels about this.

Do you mind if I in turn ask a question of my vice-chairman, Mr. Reidy?

MR. MANKIEWICZ: No, I do not.

THE PRESIDENT: The Chair recognizes Mr. Reidy, in the middle of this.

MR. RIEDY: We did have, Mr. President, quite a discussion on the question raised by Don Mankiewicz, but under the present primary law, anybody who can get 25 percent of the vote in the Convention has a right to run independent. And my interpretation is that he runs as an independent candidate for the office which he is seeking, so that in the primaries, he can run either for the office of governor or he can run for the office of lieutenant governor; and the primary law does not affect the constitutional provision which we retain, so that when the people decide who is going to be the candidate in the primary, then whoever those candidates are, run on the ticket and you cast only the one vote, as you do at present.

THE PRESIDENT: That is correct.

MR. BOTEIN: Then evidently your apprehensions are well founded and you can get a Reagan-Finch combination, and I will have to leave it at that.

MR. MANKIEWICZ: Thank you.

MR. SOBEL: Mr. President.

THE PRESIDENT: The Chair recognizes Judge Sobel.

MR. SOBEL: As the chairman, Judge Botein, pointed out, there is nothing much substantively wrong with this proposition. Basically, it is the old Constitution rearranged slightly in a more orderly manner. I simply want to make two observations concerning two minor substantive matters.

Number one, the committee refused to place in the Constitution a provision that the governor was the head of the Executive Department. This is understandable. They do not like the word "head," yet "head" is a term used throughout the executive law, the local finance law, and the state department law, referring to the governor as the head of a department.

Now, this is a minor matter, but it is a provision that ought to be included.

Basically, my objection is that the principal executive officer of this state has authority and duties which are spelled out in five lines—he is a policy-making officer, he has many more functions than are set forth in this particular provision of the Constitution. He is mentioned 27 times in the Constitution and is given other constitutional powers, and I have no doubt that he is mentioned 2,000 or 3,000 times in the statutes of the State.

Now, some reference ought to be made to the fact that he has other powers in the constitution and other powers granted to him by the laws of the state. This article basically should be consistent with article five, which is the state departments article; that is organized in a quite different manner than this, when you see that new article come out, but now I come to a matter which is relatively unimportant but which concerns Senator Brydges.

Senator Brydges, as you know, we have had no vacancies in the office of Governor or of the Lieutenant Governor-elect in the last forty years; nor have we had any vacancies in the office of Governor or of the Lieutenant Governor—well, in the office of Lieutenant Governor, I think—in the last few years. But the basic principle which should be in this constitution is that when the Governor is absent, the Lieutenant Governor acts, and when the Lieutenant Governor is absent, you act, Senator Brydges; and if you are absent, then the Speaker of the Assembly will act.

Now, you can read these provisions and it is in here, but I can read it a dozen times and you will not be able to find the specific section that refers to your powers. It seems to me that this basic principle which we find even during the course of this Convention, I believe, to settle who is to act as Governor of this state is lost somewhere in an article which was prepared in 1962 by somebody who must have been asleep. It is disorganized, it is not consecutive. It has some loopholes, none of which is likely to occur in our lifetime, but it is difficult to read. Since we are preparing a new constitution, my primary point is that it should read like a new constitution, that it should be readable and understandable, and even be enthusiastically enjoyed by somebody who reads the provisions.

MR. BOTEIN: Mr. President, may I respond very briefly.

THE PRESIDENT: Yes, Judge Botein.

MR. BOTEIN: In the first place, it would have required extra and, in my opinion, excess verbiage to have recited that the Governor is the head of the Executive Department. We stated in our proposition that the executive powers shall be vested in the Governor. This is the present wording in the present constitution and I do not think anybody has ever been under any illusions as to who is head of the Executive Department under that.

As to the succession of the President pro tem, I submit that that is very clearly and succinctly set forth in this proposed article.

MR. SOBEL: Just one further word, in answer to Judge Botein: It is very true that the present constitution leaves out the sentence that the Governor is the head of the Executive Department. It was in the constitution until 1962. At that time the Governor made a proposal to the Legislature for a complete reorganization of the Department. Some of those proposals were adopted by the Legislature. The one which contained the provision that the Governor shall be the head—not of the Executive Department—he wished to change the nomenclature to “the head of the Executive Officers”—it was not passed, and that is the only reason it is not included in the present constitution.

Again I repeat, this is all minor matter. I propose to introduce the proposition which I think is much more interesting reading and then, perhaps, on third reading those of you who would like to, might substitute mine. There are no substantive provisions that need to be clarified.

THE PRESIDENT: The Chair recognizes Mr. Weissberg.

MR. WEISSBERG: Mr. President, I offer the following amendment, waive its reading, move its adoption and will explain said amendment.

THE PRESIDENT: Just a moment, Mr. Weissberg, would you hand up the amendment, please?

And before you start, Mr. Weissberg, I would like again to repeat that which I have said on several occasions: that if any delegate wishes to amend—and he has a perfect right to move to amend—I think we should extend the courtesy to the leadership and the President—that means both sides of the aisle and the President—in advance of a discussion so that we would be prepared and know what the amendment is all about; and that I trust that between the leadership and myself we might work out some arrangement on how to handle amendments in the future.

Many amendments that we discussed yesterday—and we discussed a great number of them—were amendments that most of the delegates were hearing about for the first time, and I think it is unfair in a proper deliberative body to expect to be able to get the full import of any amendment without having had at least some prior notice. So I trust each delegate from now on will consider the fact that if they are prepared to make amendments—and I am sure every delegate knows whether he is going to offer an amendment—that he do so in enough time to give the leadership and the President an opportunity to know what the amendment is about.

Mr. Weissberg, I am not speaking particularly about you, but I asked you to show your amendment to Judge Botein before, and you did. The Chair recognizes Mr. Weissberg.

MR. WEISSBERG: Mr. President, it is a simple amendment. I have discussed it with Judge Botein and Dan Reidy before introducing it; and had I known this was going to be on today, I would have, of course, submitted it to the leadership in advance.

THE PRESIDENT: I have stated, Mr. Weissberg, I am not talking particularly about what you did.

MR. WEISSBERG: As a member of the Committee on the Executive Branch, I applaud the work that the Committee has done and I think the article is an excellent one. I would respectfully suggest one small change, however, and that change can be found at the top of page four of the present proposition in Section C on the first line: I would delete the words “is absent from the state”. The effect of that amendment, fellow delegates, would be to allow the Governor of the State of New York to act as Governor whether he is in or outside of the State of New York, and it seems to me there is merit in this change for the following reasons:

When this proposition which has been substantially extracted from the 1938 Constitution was adopted, communications were not on the level that they are on now. There was very good reason to believe that when the Governor was absent from the State, it might be difficult to communicate with him, it might be difficult for him to act in an emergency. I submit that under today's modern communications and with today's modern means of travel, this is not necessary; and I submit to you that the Governor of the State of New York ought to be put in exactly the same position as the President of the United States. He ought to be able to act wherever he is.

There is another and more important reason why I think this amendment has merit, and it was alluded to by Delegate Mankiewicz a few minutes ago when he asked a question of the Chairman, and that is the implications of the current primary law in the State of New York. Notwithstanding the excellent relations that exist between the Governor and the Lieutenant Governor today and notwithstanding the fact that this has been the rule in the past, it is entirely possible that in future elections there will be a primary candidate for lieutenant governor of a faction, different from the factions supporting the candidate for governor, and that we may very well have in this state what Judge Botein so succinctly referred to as a "Reagan-Finch situation."

And it occurs to me that with the great tradition that we have in this State of our governors moving on occasion to higher office and constantly being out of the State for very good purpose, it might be unfortunate if we had a situation which I think we could have, where the Governor could be of a little different persuasion than the Lt. Governor.

Now this, I must emphasize, is obviously not a partisan proposal. No one knows how the candidate for Governor or for Lieutenant Governor will be chosen in 1970. No one knows if this situation will occur in either party or, if it does occur, whether it will be in my party or in the other party. But I do submit to you that a very excellent article could be slightly modernized and a very thorny and possibly political problem could be eliminated if this small amendment were adopted. Thank you.

MR. REIDY: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Reidy.

MR. REIDY: With the permission of the Chairman of the Committee, I rise to oppose the proposed amendment. Ladies and gentlemen of the Convention—and this, I assure you, I think you have heard—the language is certainly not a minor amendment in any shape, form or substance. I cannot tell what may happen in the primaries ten or twenty years from now. And what my fellow delegate, Frank Weissberg, is talking about is, of course, the new primary laws that have been adopted by the Legislature in their infinite wisdom last year. Experience has not given us any rules so far because the law has not even become effective and will not become effective until the nominating conventions are held in 1970.

At the same time, what this proposition would do, however, would be to put a burden on the Governor's back which he does not have today and which I doubt any Governor would want. We have seen the Presidents of the United States age by month and by year, because no matter where they travel throughout this world, they have the burden of the presidency upon their backs, which they never can rid themselves of. Now, contrast the facilities that the President of the United States has as he travels throughout the world with the facilities of a governor of any state. The President of the United States, of course, has embassies and consular officers and he has ambassadors; he has army and he has navy communications throughout the world. He has instantaneous communication. He keeps in touch by every available means of communication and he has bills flown to him every day, and he is in complete control of the situation,

insofar as anybody can be in this day and age, and in this atomic age, particularly.

If you eliminate those three or four words from the Constitution you are making of a Lieutenant Governor, a Mr. Throttlebottom, who would really have no functions except perhaps to sit there and preside over the Senate. He is not a member of the Senate. He has no rights, of course, to pass on bills, not being an elected member of the Senate.

Furthermore, if you do eliminate these words, I say you are paralyzing the legislative process in this State because no matter where the Governor may be during any legislative session, there are urgent messages of necessity that come up from day to day in the legislative branch of the government, and one of these powers that the Lieutenant Governor has then is, he is acting as Governor of the state, and, rather than paralyze our Legislature and wait for the Governor to come back, the Lieutenant Governor, in consultation with the Governor, can send up these messages of necessity so that the Legislature itself can keep active.

I have great respect for Frank Weissberg because he is a very astute and learned individual, but again I say, ladies and gentlemen, that we cannot anticipate something that may happen ten or twenty years from now. I am one of those who believe in the democratic process and I believe that while there is the rare probability that there may be such a situation such as Frank Weissberg described, I have enough faith in the democratic process and in the processes of our nominating convention to feel that this situation never could happen, and therefore, I ask that you vote against the proposed amendment.

THE PRESIDENT: Judge Botein.

MR. BOTEIN: May I supplement that excellent presentation by Mr. Reidy with just one more point.

As Mr. Reidy pointed out, the President has the enormous means of communication not available to any Governor, and my additional concern is this, that if an emergency ever arises within the State and the Governor is in California or somewhere equally remote, and immediate action must be taken, the Lieutenant Governor is paralyzed, and he must wait until the Governor can come upon the scene or act upon cabled information, and I think that is very unsatisfactory for on-the-scene decisions.

THE PRESIDENT: Senator Brydges.

MR. BRYDGES: I don't know as I quite like this proposed amendment. I don't know whether I should speak to it or not. And when I speak to it, Mr. President, I am speaking entirely in your interest and not my own.

My concern when this article was reported was simply that they might transpose Speaker of the Assembly and President Pro Tem of the Senate. They not having done that, I accept this proposal with due thanks to the committee and its membership.

But very briefly in connection with the proposal of the delegate, the amendment of Delegate Weissberg: as you and I know, from time to time we do act as Governor of this State in the absence of those who precede us in the rank of succession. I know, for instance, that the night of the great blackout some time back, the Speaker of the Assembly was then Acting Governor because the other three were out of the State, and that was a situation where some emergency action might well have had to be taken.

I know that when the Governor and Lieutenant Governor are away, we sign extradition warrants. I know that when they were both away awhile ago, I called the National Guard, the Commander-in-Chief of the National Guard, and I said "I am Acting-Governor of the State. The Governor is in California, the Lieutenant Governor is over in Connecticut." I said "There's a guy who might present himself at the border in the next 24 hours. Sometimes he says he is

Napoleon, sometimes he says he is Lieutenant Governor Wilson." But fortunately, he got back nonetheless.

I ask to be excused from voting on this question.

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor indicate by saying aye; noes, nay.

The amendment is defeated. Senator Greenberg.

MR. GREENBERG: I want to direct the attention of Judge Botein and the delegates here to page 2, line 19.

Now, the last word on that line is the word "items." Now, this word "items" is a very important word in connection with the budgets that are presented by the Governor to the Legislature, and I would like to know, Judge Botein, just what your committee had in mind in using that word "items"?

It also appears on line 20.

Now the court decisions would seem to indicate that this word "items" used in this connection, that the word has a very, very narrow meaning.

On the other hand, budgeting in recent years has been undergoing some very important changes. Now and then and with some degree of frequency, perhaps even more so in the years ahead, it will take on a much broader meaning and we will be referring to "programs."

Now, I am not quarreling with the use of the word here, but I think it is important for you on behalf of the committee to let us all know so that in the future we will be guided accordingly, just what is meant by the word "items" as now found in this section of the proposal.

MR. BOTEIN: Well, Mr. Greenberg, the language you refer to on line 19 of the proposed bill is identical with the language in Section 7 of the present Article IV which reads: "If any bill presented to the Governor contains several items of appropriation of money"—and if I may, with your consent, in view of the fact that it is presently in the Constitution, has presently been the subject of consideration by the Legislature and others for many years, I would like to ask one of the most knowledgeable persons in the State, the ranking member of the Senate Finance Committee, just what is meant by those "items" in the present Constitution. If you tell me what it means in the present Constitution, I will tell you that that is what it will mean in the future Constitution.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Mr. Greenberg.

MR. GREENBERG: The learned jurist has thrown the ball back to me.

THE PRESIDENT: The buck stops at your desk.

MR. GREENBERG: Now, this is much more serious than would appear at first glance. So far as I am concerned, in the Article on the budget process which is the subject of the Committee on State Finance, regardless of what may have been the interpretation of the meaning that was intended when it was first adopted in the Constitution, and regardless of the narrow interpretation placed by court decisions and generally, I might say that those court decisions interpreted this language to mean the object or objects of expenditures. It is my purpose, it is my idea and my intention in the sections of the Constitution with which the State Finance Committee is dealing, that this word have a much broader meaning, and the broader meaning I believe is necessary and essential because of the fact that we are coming more and more to "program budgeting."

Now, if we are all in agreement that the word "items" as it appears here and as I expect it will appear in other proposals to come before this Convention may be understood now, irrespective of what it may have meant heretofore, as to be

all-inclusive and not to be limited to the narrow interpretation of objects of expenditures but to include broadly "programs" as well, I have no objection.

MR. BOTEIN: Very seriously, Senator, it seems to me that in this context the narrower the language, the greater the power of the Governor, because piecemeal he can destroy a much larger appropriation. I don't know if your apprehension is voiced because of any possible program budgeting in the future but in any event, speaking for myself and I hope for Vice-Chairman Reidy and the other members of the Committee, if this article is advanced to third reading, I can promise you that any recommendations or any action taken by your Committee on Taxation and Finance relating to the scope of these items will certainly be given very, very serious consideration.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: As one member of the Committee on State Finance, I am satisfied with the suggestion made by Judge Botein, and will try to make it clear when the other propositions come before this Convention.

THE PRESIDENT: The Chair recognizes Mr. Fastenberg.

MR. FASTENBERG: Mr. President, I would like to ask a question of Judge Botein.

THE PRESIDENT: Judge Botein, would you yield?

MR. BOTEIN: Yes.

MR. FASTENBERG: Judge Botein, paragraph 4-B, lines 9 to 12 on page 3 provide that the Governor shall be elected for a term of 4 years at the general election in 1970; is there anything in this proposition or in any other proposition to indicate when the term of office of the Governor shall begin after the election in 1970?

MR. BOTEIN: In Article XIII it is provided the political year begins on January 1, so that would take care of that.

MR. FASTENBERG: Thank you very much.

THE PRESIDENT: Judge Sobel.

MR. SOBEL: May I take a minute to answer Senator Greenberg's inquiry? This language was transposed from Article 4-A which dealt exclusively with the budget. It did not deal with other appropriation bills. Therefore, when it was transferred here presumably it still continues to apply only to the budget. Therefore, no budget bill is ever returned to the Governor unless items are added. It is those items which are added in a budget bill that this particular language refers to.

Now, whether it is broad enough to cover a big appropriation or not we don't know, but I would presume it is.

A separate appropriation bill which is not part of the budget is treated like any other bill. He may not reduce an appropriation or of course add to it or cut it in half.

MR. VAUGHN: Mr. President.

THE PRESIDENT: Mr. Vaughn.

MR. VAUGHN: Will Judge Botein yield to a question?

THE PRESIDENT: Judge Botein, would you yield to Mr. Vaughn?

MR. BOTEIN: Yes.

MR. VAUGHN: Judge, my question possibly could be interpreted to be on behalf of the League of Women Voters. Does the use of the pronoun "he" mandate the male gender?

MR. BOTEIN: I didn't hear you.

MR. VAUGHN: The use of the pronoun "he", does it mandate the male gender?

MR. BOTEIN: No, of course not, and you can assure Judge Streit's lady it does not.

THE PRESIDENT: The question occurs upon the advancement of the proposition No. 1354. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 178; noes, none.

THE PRESIDENT: The proposition is advanced to the order of third reading and is submitted to the Committee on Style and Arrangement.

Mr. Burns.

MR. BURNS: With the indulgence of the house, I would like to be given permission to just say to Judge Botein and to Mr. Reidy that I, for one, and speaking not as a member of your committee, sir, applaud you for the form and content of this splendid memorandum. I think that the bill itself was very nicely set forward. It has been easy to have an orderly discussion and I compliment you for it and I hope that maybe others on substantive articles would be handled in the same manner. (Applause)

MR. BOTEIN: I would like to transfer that praise to the staff that deserves most of the credit.

MR. PETERSON: Mr. President.

THE PRESIDENT: Mr. Peterson.

MR. PETERSON: I request that you extend your usual cordial greeting and warm felicitations to a former member of our Legislature, one who served as a representative of the 143rd Assembly District, seated to my right, Arthur Hardwick, Jr.

THE PRESIDENT: The Chair is very pleased to welcome to the Convention my colleague and good friend, Arthur Hardwick, and welcome him to the deliberations of this Convention, and trust that you will enjoy them.

Committee notices.

THE SECRETARY: Committee on Inter-Governmental Relations will meet today immediately after the session in Room 505.

The same Committee will meet on Wednesday, August 2, at 8:30 A.M. in Room 332 and also immediately after the session on Wednesday, August 2, Room 332.

THE PRESIDENT: The Chair recognizes Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I move the Convention now stand adjourned until tomorrow at 2:00 P.M.

THE PRESIDENT: So ordered, tomorrow at 2:00 P.M., and may I say for the benefit of the members on the Democratic side, that there will be a conference of the Democratic members in the Assembly Parlor tomorrow at 12:30 and I trust that the members will have their sandwich before then, because we will go from there right into the session at two o'clock.

(Thereupon at 3:20 P.M. the proceedings were adjourned to August 2, 1967 at 2:00 P.M.)

**WEDNESDAY, AUGUST 2, 1967**

THE PRESIDENT: The Convention will come to order. Will the delegates please assume their seats.

REV. HAROLD BAUM: Let us pray. O God, so guide and bless this Constitutional Convention of the State of New York that it may ordain for our governance only such things as please Thee, to the glory of Thy name and the welfare of the people, through Jesus Christ, Thy Son, our Lord. Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will read the journal of yesterday's proceedings.

MR. GALIBER: Mr. President, I move we dispense with the further reading of the journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered.

MR. BLATT: Mr. President.

THE PRESIDENT: Mr. Blatt.

MR. BLATT: I would like to welcome here and acknowledge the presence of three ladies who are very active in community relations in my senatorial district, the 31st Senatorial District, and the grandson of one of them: Mrs. Lily Calera Jones, Mrs. Valdes and Mrs. Felina Lopez, and the grandson of Mrs. Valdes, Omar Valdes.

I respectfully ask you to welcome them and acknowledge their presence.

THE PRESIDENT: The Chair is very pleased to welcome these people from your area, Mr. Blatt, and I trust they will enjoy the proceedings here today.

THE PRESIDENT: Mrs. Robinson.

MRS. ROBINSON: Mr. President, Mr. Blatt jumped the gun on me because I wanted to tell you Mrs. Valdes is also the niece of a former Speaker of the House of Representatives of Puerto Rico, and he was the Speaker for 20 years until his death in 1963. So I am also glad to have you welcome Mrs. Valdes.

Also Mr. President, from your district we have Mrs. Connis M. Bogan and Mrs. Estella Spigner with Master Sherwood Keith Bogan and they are sitting in the rear.

I wish you would give them you kind greetings.

THE PRESIDENT: The Chair is very pleased, Mrs. Robinson, to welcome the people from our area to the deliberations of this Convention and trust that they will enjoy the same.

(Applause)

THE PRESIDENT: Calendar of the day. Propositions on the order of second reading. The Secretary will read.

THE SECRETARY: (Reading) 1335, Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to taxation of intangible personal property.

MR. GREENBERG: Ready.

THE PRESIDENT: Ready. Lay it aside.

THE SECRETARY: 1336. By the Committee on State Finances, Taxation

and Expenditures. A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to the power of taxation.

MR. GREENBERG: August 7.

THE PRESIDENT: August 7.

THE SECRETARY: (Reading) 1351. By Rules (at the request of Committee on State Finances, Taxation and Expenditures.) A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to exemptions from taxation.

MR. GREENBERG: Ready.

THE PRESIDENT: Lay it aside.

THE SECRETARY: (Reading) 1352. By Rules (at the request of Committee on State Finances, Taxation and Expenditures.) A proposition to insert a section in the article on taxation in the proposed Constitution, in relation to taxation of intangible personal property.

MR. GREENBERG: Ready.

THE PRESIDENT: Lay it aside.

THE SECRETARY: (Reading) 1365. By Rules (at the request of Mr. Shapiro, Chairman on Behalf of Committee on the Legislature.) A proposition to repeal Article III of the Constitution relating to the Legislature and inserting a new article, in relation thereto.

THE PRESIDENT: On this proposition, 1365, which is an entire article on the Legislature, I would like to state that this should be put over at least until next Monday so that the delegates will have an opportunity to read the proposition and the article in view of the fact it was only printed last night and put on the desks for the first time today. So I would like each member to take the article and proposition with them and study it over the weekend, and I would like to know in advance of Monday from any delegate who wishes to propose an amendment, so that the amendment can be put into the form of a mimeographed sheet to indicate to all the delegates what the amendments will be. So that if there is an opportunity today for any delegate to leave in my office and in Senator Brydges' office a copy or a statement concerning a proposed amendment, then they can proceed to prepare the amendment in regular order, but we will at least have a synopsis of the amendment proposed so that when we reach this proposition on Monday on the calendar we can proceed in regular order.

I would again advise every delegate who intends to propose an amendment that he at least give us a synopsis of the amendment, that means Senator Brydges and my office, today sometime, or tomorrow sometime so that they can be put in mimeographed form and sent to all the delegates. Judge Shapiro, I would ask you at this time to put this over until Monday.

MR. SHAPIRO: All right. Monday.

THE PRESIDENT: Monday's calendar.

THE PRESIDENT: Laid aside calendar.

THE SECRETARY: 1335. By the Committee on State Finances, Taxation and Expenditures.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: Mr. President, ladies and gentlemen: In order that all of us may have a better understanding of what we have before us on today's

calendar, let me say by way of introduction that we have three propositions, numbers 6, 19, and 20 are the calendar numbers.

Number 6, proposition No. 1335, relates to the exemption from taxation presently enjoyed by non-residents with respect to intangible personal property. I emphasize the word "non-residents." It refers only to intangible personal property of people living outside of the State of New York.

Number 19, proposition No. 1351 is the proposal which relates to the tax exemptions now enjoyed by educational, charitable and religious institutions together with some general provisions with respect to the rights of the Legislature with respect to changing or altering of exemptions.

No. 20, or 1352, is the proposition which relates to areas of taxation, one, intangibles of residents and secondly, after the amendment which I am about to offer, if it is adopted, also relates to the prohibition against taxing undistributed profits of corporations.

Now I am going to ask permission, Mr. President, to take up number 20 first, that is calendar number 20, for the purpose of offering an amendment, and when this amendment has been disposed of, I will then ask permission of the President and the Convention to allow me to discuss all three of them collectively with the understanding, of course, that each one will be voted upon separately, and amendments may be offered to each one before the vote is actually taken.

THE PRESIDENT: All right, Senator Greenberg, we will lay this number 6, the first one on the calendar, aside temporarily.

MR. GREENBERG: That's right.

THE PRESIDENT: And will the Secretary call 1352.

THE SECRETARY: Proposition 1352.

THE PRESIDENT: Without objection, this proposition is before us now. Senator Greenberg.

MR. GREENBERG: Mr. President, I offer the following amendment together with the Committee report which was adopted. The amendment and the Committee report are the product of a majority of the Committee.

THE PRESIDENT: Will you send up the amendment, please. Senator Brydges, is there any objection to this procedure?

MR. BRYDGES: No objection, sir.

THE PRESIDENT: Then we will discuss, then, the amendment. Senator Greenberg, will you explain the amendment?

MR. GREENBERG: Mr. President.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: The subject matter which we are now discussing is found in Section 3 of Article 16 of the present constitution. It is the latter half of that section. The first part of that section is found in proposition 1335, calendar number 6.

Now, originally the proposition as introduced by the committee and now on the calendar simply reads: "intangible personal property shall not be taxed."

Upon further discussion by the committee members, the feeling was expressed that this language, although we felt that it continued the prohibition against taxes on intangible personal property which is now in the constitution, without any further language some members felt that somewhere along the line questions might be raised, some doubts might exist, and some other interpretations put upon the proposition as originally advanced, because of the non-use of the language

which has been and is in the constitution today. And, therefore, without in any way changing the substance of what now exists or what was intended to be by the original proposition as reported by the committee, but in order to remove any possible doubts that might exist in the minds of anyone, the amendment as offered today adds to the language of the printed bill the exact same language which is now in the constitution; and it will read, as you will find on your desks, in the report of the committee, where the amended proposition is set forth in toto; "Intangible personal property shall not be taxed ad valorem, nor shall any excise tax be levied solely because of the ownership or possession thereof, except that the income therefrom may be taken into consideration in computing any excise tax measured by income generally."

Now, those words are in the present constitution and if this amendment passes and the constitution is eventually adopted by the people, we will have as a result the exact same language we have now.

The amendment further adds words which were not included in here. There is a difference from the original proposition as put out by the committee. We have added— and this is in the amendment and is in the present constitution—"undistributed profits shall not be taxed."

Now, ladies and gentlemen, that should clarify the amendment and clarifies the proposition. When action has been concluded on this amendment, I will then, Mr. President, discuss, together with the other two propositions, the entire taxation picture.

And just so that there will be no question, Mr. President, about the intent of the committee, I will read into the record the report which was adopted by the committee and will hand over the amendment. This section, referring to the amended section, is derived from Article 16, Section 3 of the present constitution, and continues first the policy of removing from the Legislature the power to impose taxes upon intangible personal property itself or upon the owners or possessors of such property because of such ownership or possession. The prohibition against taxation—and this is what all of us should be very attentive to, ladies and gentlemen,—the prohibition against taxation does not relate to or apply to the sale, transfer, or other event or occurrence involving intangible personal property.

Secondly, this section continues the prohibition against the taxation of undistributed profits, and I move the adoption of the amendment, Mr. President.

MR. BLACK: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Black.

MR. BLACK: Mr. President, I rise to support the amendment which has just been offered by the distinguished Chairman of our Committee on State Finances, Taxation and Expenditures, and which reflects the almost unanimous thinking of the membership of that committee—certainly the unanimous thinking of the minority membership.

Mr. President, since the original proposal with regard to intangible personal property taxation reached the floor of this Convention, on the 26th of June, there has been tremendous personal interest on the part of individuals and organizations throughout the State of New York as to this particular problem. There has been reflected, as Senator Greenberg himself so well pointed out last week in correspondence to members of this Convention, because it is a matter of deep concern to all of us here in New York State, that our own Convention's Committee on Economic Development has taken a bipartisan interest in this problem and has indicated that it felt that we should keep the present prohibitions against state taxation of intangible personal property and undistributed corporate profits. I think it is important in this particular connection to understand what this means to the State of New York, what it means in terms of keeping business here and in terms of attracting new business.

This proposition, which is in our Constitution and has been there since 1938, when it was approved by that Convention and voted on by the people, assures commerce and industry of this particular protection; and by our action today in adopting Senator Greenberg's amendment, we will, I hope, assure it for another generation. I think it is important that we do that because we want to attract new business to the State by establishing or rather continuing a favorable economic climate.

Now, any question of taxation is a very intricate one and we felt that here it would be much better to include the original language which was adopted in 1938 so that we would not give rise to any great mass of new litigation involved by any change in the language. For this reason I think this amendment is a very wise one, because a great body of cases has already developed upon which we can rely. I think one more important point which we should consider here in lending our support to Senator Greenberg's amendment is this:

We have had before and we will have to come, many cases in which we as individual delegates are going to have to make a decision between brevity and clarity. I think in this case the decision has been properly made in favor of clarity, and so I am pleased to support it and I urge the passage of Senator Greenberg's amendment. Thank you.

MR. BROMBERG: Mr. President.

THE PRESIDENT: Mr. Bromberg.

MR. BROMBERG: Mr. President, I have an amendment to offer to Mr. Greenberg's amendment which I would like to hand up and propose to waive the reading, and I would like to explain it and speak to it.

THE PRESIDENT: Just a moment, Mr. Bromberg. May we have the amendment, please, Mr. Bromberg? Mr. Bromberg offers an amendment to the amendment offered by Senator Greenberg, so we will take this up in its regular order first.

Mr. Bromberg, will you please explain the amendment that you offer?

MR. BROMBERG: Senator Greenberg's amendment would bring back into the originally proposed article what is presently in the Constitution with regard to undistributed profits, and so Senator Greenberg's amendment states—"undistributed profits shall not be taxed."

The amendment which I propose would delete those words, it would delete the words: "undistributed profits shall not be taxed," so that there would be no prohibition in the Constitution against such taxation. I think that we should know what we are doing here with regard to this taxation article.

New York State has an extremely complex and intricate system of personal income, inheritance and gift taxes, business taxes, and consumer taxes, which have developed since the inception of the government of this State. I think that we should all bear in mind that this highly complex tax structure was developed almost entirely by freely exercised legislative action without constitutional prohibition or inhibition up to the Constitutional Convention of 1938, where taxes were tried which made no economic sense, which were in any way oppressive, they were abandoned.

For some reason entirely unknown to me, and, I think, entirely out of keeping with the regular and ordinary processes of good state government, the 1938 Convention for the first time in the history of this State imported prohibitions against action of the State Legislature in certain specific possible areas of taxation.

I refer you now to a monograph which was published by the Committee for Economic Development just recently, this last month, called "Modernizing State Government." Although the people engaged in the research and the publishing of this monograph were to some extent professors, basically and to a large

extent the people who did the work published the monograph and support the monograph with leaders of the largest industries in this country,—such as I.B.M., oil companies, and others. They had, among other things, the following things to say:

“State Constitutional revision should have highest priority in restructuring state governments to meet modern needs. Stress should be placed on repealing limitations that prevent constructive legislative and executive action.”

And then later on: “And on eliminating matters which are more appropriate for legislative and executive action.”

With specific regard to constitutional restrictions on the legislatures, this committee stated: “We recommend that constitutional restrictions preventing state legislatures from exercising effective power over financial matters be removed.” I cite this to you as the opinion of industry.

Now, how did the undistributed profits prohibition get into our constitution? In 1934 the Federal Government passed an undistributed profits tax upon corporations which was highly unpopular and expanded it again in 1937. The Legislature of this state never passed any such act nor, indeed, was it contemplated. However, on the floor of the Convention of 1938, a delegate arose to offer an amendment that there be a prohibition against undistributed profits tax; without much or without any debate, it was passed. It stayed in our constitution and now we want to enshrine it for another thirty years against every tenet of good constitutional draftsmanship, against every tenet of proper state legislative functioning and against every sense of reality, and this I submit to you is the worst of all.

You have here a constitutional prohibition which is nothing more than a prohibition against a certain kind of tax upon a corporation. It affords in effect no—and I emphasize the word “no”—protection to any corporation doing business in this state. All profits of corporations doing business in this state are taxed. The Legislature has the power to double that tax, to triple that tax. The Legislature, in the exercise of its police power, could set up a business climate in this state which is completely inimical to the operation of corporations in general or certain corporations in particular. This kind of special prohibition, of special protection, which is meaningless, which affords nobody any real protection, has no business in this constitution. We have no business simply following words that have existed for thirty years without any basic reason, except only to satisfy the irrational—and I repeat—irrational fears of some members of the business community. I submit to you that my amendment should be adopted, that this restriction against the Legislature should be removed from the constitution.

THE PRESIDENT: Judge Sobel.

MR. SOBEL: I rise to speak in favor of this amendment.

THE PRESIDENT: Is that the amendment to the amendment?

MR. SOBEL: Yes, it is the amendment to the amendment.

As some of you gentlemen know, in 1938 there was no taxation article in our Constitution. The members of the Taxation Committee of that Convention having very little to do, sought some provisions to be included in the Constitution. Some were good, some were indifferent and some were bad, but the one that was voted down unanimously was the one that undistributed profits shall not be taxed. Therefore, when the report came out on the floor, it came out with a unanimous recommendation against the inclusion of a constitutional freeze on the tax of undistributed profits. From the floor at about 2 o'clock in the morning a delegate, Delegate Garry offered an amendment to the Tax Committee's article as reported. He included in his amendment a prohibition against capital gains taxes and capital gains losses in this State. He accompanied this memorandum with a letter from the State Tax Commission saying that capital gain taxes, capital gain loss

taxes wiped each other out, they were of absolutely no value and, therefore, that the State should discard them. Now, this was a State Tax Commissioner charged with responsibility, authorizing the inclusion of such a provision in the Constitution.

I took the trouble to make a computation as to how much the inclusion of such a provision would have cost the State of New York and it comes to \$8 billion. Now, that was voted down, fortunately, by a very close vote. Four votes separated its acceptance and its defeat. Included in the provision was the one for undistributed profits, which was also voted down, but at 7 o'clock in the morning Delegate Garry again renewed his efforts to at least get part of this into the Constitution, and he did, he succeeded because everybody was tired and nobody knew particularly what they were voting for.

Now, as my friend, the author of this amendment says, this is the way things get into the Constitution and this is a poor way to continue to freeze this kind of provision into the Constitution. Now, what is the undistributed profits tax? It is very true that we have never had an undistributed profit tax in this State, but the Federal Government a long time ago decided that big stockholders in large corporations were avoiding the payment of income tax by not permitting their corporations to distribute to them the dividends which normally the company would be distributing, so the first law passed by the Congress of the United States was back in 1939—I had something to do with drafting that provision—provided that whether the profits were distributed or not they were taxed to the stockholders. That was a little unjust, perhaps, because whether or not you got your dividends, you paid your income tax on it. When you eventually got it, whether you got it in the form of capital gains or you got it as distributed dividends, you did not have to pay a tax under the circumstances. Later that tax was modified to say that only unreasonable withholding of profits would be taxed. The business community to which my friend refers then went to work on that provision and they put a ceiling underneath the unreasonableness so that at the present time if you have \$100,000 of untaxed undistributed profits, that is deemed reasonable as a matter of law, and then an inquiry is made with the burden of proof on the government to show that you are not unreasonably withholding distribution of the profits to your stockholders.

Very little money is gotten as a result of this thing by the Federal Government simply because it is not enforced, but I point out to you that at the present time our State tax, which does not contain such a provision, is keyed to the Federal income tax and, as a matter of fact, those people who have paid an undistributed profit tax—there were 15 last year—did pay their State undistributed profit tax notwithstanding this prohibition in the Constitution, which proves again that lawyers don't read the Constitution. Nevertheless, I feel very strongly that a provision put in at 8:00 A.M. in the morning before a tired bunch of delegates not knowing what they were voting for, ought not to be included by a deliberative body like this and again frozen into the Constitution for another 30 years.

THE PRESIDENT: Mr. Mankiewicz.

MR. MANKIEWICZ: Mr. President, I rise in support of the Bromberg amendment for the following reason; that I feel there has been inadequate notice, particularly to me and I think to every member of the committee. I object rather strongly to this procedure. Let me sketch out what I think the parliamentary situation is. The purpose of a calendar is to give the members notice of what is to be considered. Relying upon the calendar, I noted that taxation of intangible personal property would be before us. The Chairman of that committee then offered a technical amendment, which I understand is perfectly permissible and frequently necessary and I am prepared to go along with it. But he then adds six words belonging to another subject entirely and not covered even by the title of this measure. I am inclined to be persuaded by Mr. Bromberg's argument.

I don't think we ought to bind ourselves to avoid this particular tax for the rest of this century and perhaps into the next, though I would not favor its enactment at this time. But what my support goes most particularly to is this method of bringing something before us. Now, I submit that I had absolutely no notice. Undistributed profits, I believe, can sometimes be tangible property. In any event, they are certainly not included in the material before us and I would urge that the Convention adopt the amendment leaving the Senator free, if he wishes, to bring this matter before us at some other time when we may have had notice of it, and the mere fact that delegates may be tired at 8 o'clock in the morning does not render that procedure any more objectionable than this. These are fresh, vigorous, enthusiastic delegates, but they have no notice, and for that reason I would support the Bromberg amendment and urge its adoption.

MR. GREENBERG: Mr. President.

THE PRESIDENT: Senator Greenberg.

MR. GREENBERG: I am proudly going to do something now that is very rarely done in a legislative body or in a Constitutional Convention. As Chairman of this Committee which reported out this amendment, I want you, Mr. President, to know and the delegates of this Convention to know that I was opposed to the inclusion of this prohibition against taxing undistributed profits. On the other hand, as a Democrat I recognize that the majority vote of a committee must prevail and should prevail, and so the amendment came out in accordance with the wishes of the majority. I intend to vote for the amendment offer by Mr. Bromberg. This prohibition does not belong in the Constitution, it is meaningless and big business is just unduly, unnecessarily alarmed. They are paying taxes now on the undistributed portion of their profits, and some of us don't know what this section means. The State Bar Association in a report which I have received this morning recommended that this prohibition be excluded. The Association of the Bar of the City of New York in its report recommended that it be excluded. Now, I want to remind the members of this Convention that not so many years ago we were engaged in a fight in the Legislature for quite a few years because business wanted our State tax laws to conform to the Federal laws, and we finally succumbed and business has saved—and I don't begrudge it to them, that was the will of the people—the Constitution was amended and business has saved annually millions of dollars because we now conform to Federal laws which provided and still provide certain loopholes which our State tax laws did not provide. And now when we try to make constitutionally valid, that is by omitting something which should never had been put into the Constitution in the first place, when we try to make it possible for our State tax laws to honestly conform with Federal laws because we do have Federal taxation, as Judge Sobel pointed out, of unreasonable accumulations of undistributed profits, so when we try to make our laws conform, big business comes along and tells us no, we don't want conformity. Well, Mr. President, so far as I am concerned they can't have the pie and eat it. Now, of course, I realize I have just one vote but I intend to support Mr. Bromberg's amendment and I hope it prevails.

THE PRESIDENT: The Chair recognizes Mr. Rose.

MR. ROSE: Mr. President, I merely want to stand up and congratulate the Chairman of the Committee for articulating so effectively the opinions of the minority of the Committee. I would like some of the other chairmen of committees to learn from this remarkable example, and I mean particularly the chairman of one of my committees. Thank you.

MR. CORNELL: Mr. President.

THE PRESIDENT: Senator Cornell.

MR. CORNELL: Mr. President and delegates, this amendment which came

out today, of course, is a broad amendment of the proposition that has previously been on the calendar. The matter was discussed thoroughly from all angles in committee and I am very happy to know that as a result of discussions in committees, this amendment was brought forth with the almost unanimous approval of all members of the committee. This is the way it should be done; we shouldn't need to bring these arguments out on the floor unless there are specific differences, such as this one, that we are prepared to take up.

I will address myself simply to Mr. Bromberg's proposed amendment and I will say this: I was not there in 1938, I don't know the circumstances under which this was added to the deliberations and the actions of the 1938 Convention. I don't know the temper of the delegates, but I assume that they were very well informed people, they had tax authorities then, they had tax advisors, they knew what they were doing, and in any event, the actions of that Convention speak for itself, and that prohibition has remained on the books from 1938 down to the present time. It seems to me the burden must be on the other side for those who wish to eliminate it to advance some good reason. The good reason is, as I would take it from the argument so far, that the Legislature must be authorized in substance to tax undivided and undistributed profits.

Business is entitled to some sense of stability. This prohibition has been on the books since 1938 and business has geared itself accordingly. It has come into the State of New York in large amounts and huge companies have invested billions of dollars in this State based upon, among other things, the tax atmosphere. These things are thoroughly analyzed by all of their advance people and the tax men of these individual corporations, and based upon the tax atmosphere, and particularly any tax prohibition that had been on the books for practically 30 years. It is well known they make their decision based on what they find to be the facts, including the tax statutes that are on the books.

The Commissioner of Commerce appeared before the Committee, not this Committee, but before another Committee, I am informed, on this one proposition alone and I believe his appearances have been limited before committees or other groups of this Convention, in order to tell that Committee that this was one of his leading selling arguments in inducing corporations to come into this State and to remain here. We know that we have a very diligent department engaged in inducing other businesses to come into this State, and it is to the great advantage of the economy of the State that we have such an organization and I know that they are most diligent.

Now, irrespective of whether there is going to be any change in the tax law or not, this is a good selling argument. Business men rely upon it and the Commissioner of Commerce has used it in the past. Now, are we to take away one of his very important selling propositions? What does it mean? Does it mean anything to these corporations or should it mean anything? In my opinion, it should. Corporations pay, they pay their taxes to the State of New York on all of their profits, including the amounts that go into their reserve in the nature of undistributed profits. Now, if you remove prohibition, you are giving to the Legislature the power to levy any tax that they want against these undistributed profits. That could be a very severe weapon. It could be seized upon by certain elements, by the Legislature or groups within the Legislature in a program, let us say, of attacking big business which at one time was popular, it is not so popular today because we need big business. There was a suggestion, in fact the argument is made, the Legislature isn't going to pass any tax in this area anyway. Therefore, if you remove the prohibition you are not going to hurt big business. But the opportunity is there and it grants unlimited powers to the Legislature in a new area at a time when the Legislature will be desperate, in my opinion, in the next five to ten years to look around for new sources of taxation.

Accordingly, I think we should not disturb something which has been on the books for thirty years, which has been used, which as been relied upon by these

many wholesome businesses that we went to attract and keep in the State and I am opposed to the amendment.

THE PRESIDENT: The Chair recognizes Mr. Hornstein.

MR. HORNSTEIN: I would like to stand in opposition to Mr. Bromberg's amendment and add to what the Vice-Chairman of the Taxation and Finance Committee, Senator Cornell, has just said. I would like to point out that I am a member of the Committee on Economic Development, and when Mr. Peterson and the Department of Commerce came before us, he pointed out specifically that he had great difficulty in inducing businesses to move into this State because other states had tax abatement, and one of his major selling points was the fact that the tax climate of this State was definitely spelt out in the Constitution and they knew whether or not they would be taxed on undistributed profits.

I would like to point out to this assemblage that no other state in the union has an undistributed profits tax. I would like to read from a letter written by Mr. Peterson, which states: "In addition to authorizing the Legislature to tax undistributed profits of firms and corporations, would induce many corporations having their corporate headquarters in the State to move elsewhere."

And then finally, I would like to point out to you that if the Legislature were to take advantage of an undistributed profits tax, it would be a third tax on the investors and corporation. This amendment should be defeated.

MR. FASTENBERG: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Fastenberg.

MR. FASTENBERG: Mr. President and fellow delegates: I would like to point out that in none of the fifty states is there any law on the statute books permitting the taxing of undistributed profits. I can predict that if we should remove this prohibition from the Constitution you will immediately read in the Wall Street Journal and in the other financial journals in the United States that New York State is getting ready to tax undistributed profits, even though it may not be a fact, and I can see an exodus of business and coming at a time when we are looking to attract additional business to the State of New York. I think this would be a death blow to such a situation and therefore I am constrained to vote against the amendment, against Mr. Bromberg's amendment.

THE PRESIDENT: Judge Sobel.

MR. SOBEL: May I just say, of course an undistributed profit tax by a state yields absolutely no revenue. I simply pointed out, despite the fact we don't have it, the corporations of this State continue to pay it whenever they pay it to the federal government as sort of a penalty, but it does have a very great value, it compels corporations to distribute their profits.

Now if any one of you were the owner of almost ten thousand shares in a company, and the sole owner, and the company earned \$20 on that ten thousand shares, I am very certain that you wouldn't want to have it distributed because you would be in the \$200,000 bracket plus everything else you have earned.

The purpose of an undistributed profit tax is to compel your corporation to distribute at least part of the profits so that you cannot unreasonably withhold from your personal income the tax that you might normally pay on it.

Now this is the only effect. It doesn't have any use whatsoever in raising revenue for the State or for the federal government, but once it compels distribution, we do indirectly get a tremendous amount of revenue from it.

MR. CUSICK: Mr. President.

THE PRESIDENT: Mr. Cusick.

MR. CUSICK: Mr. President and fellow delegates: I don't want to prolong

this discussion, and I certainly hope that it is just a discussion and not a debate, because I feel and have told Senator Greenberg that I feel that this is certainly a non-partisan matter in every respect, and that certainly a subject as intricate as this should not be thrust into the political arena.

I would also like to congratulate Judge Sobel on his candid approach to this problem, because as he has already explained this tax would produce no revenue. In effect, it is a naked prohibition which is basically meaningless, and I suggest that if profits are to be distributed or if they unreasonably withheld, the provisions of the Internal Revenue Code effectively deal with those corporations engaging in that practice, and effectively protect the stockholders.

I would just like to say that in my opinion, the elimination of this prohibition would drastically affect the future economy of the State of New York, and I think drastic action of that kind in times such as these would not go down to the credit of this Convention or its delegates, and that the amendment should be defeated.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I don't want to address myself at the present time to the pros or cons of this amendment, but I have been sitting here since April 4th trying to determine in my own mind as to whether or not I am being fair to the people of my constituency.

And I raise the point with all the delegates, regardless of party affiliation, and in fairness to what is going to happen tomorrow, forgetting about what has already happened.

I cannot conceive of an amendment now being thrown at me when I am debating an article and being able to give it the best of my experience and attention and information so as to adequately determine for myself whether I vote for or against an amendment.

And I am constrained to say when an article has been on the calendar as this one has for so many weeks, that those men and women who have amendments, in all fairness, and I offer it not as a criticism, in all fairness should see to it that the delegates, including the leadership, have some idea of what amendments are going to be made.

I offer for your suggestion and discussion the following fact. Within a few days or next week, we are going to be debating amendments that go to the heart and core of the people's thinking, and I for one do not propose to sit in my seat and have one throw an amendment at me which may change the Constitution drastically and then I am supposed to vote intelligently on it.

I am reminded that there is a difference between being a delegate and a delegate with a conscience, and I prefer to go down in history, if I have to go down, as a delegate with a conscience.

I urge upon you in the next few days that we change our way of acting as far as amendments are concerned, and that we try to extend to each one of us all possible courtesy so as to afford the delegates the opportunity to make a very informed Constitutional Convention, and an informed Constitutional Convention will succeed in giving a document the people think is worthy.

THE PRESIDENT: I would like to state again, as the majority leader has stated, that the members should be granting to the leadership at least the courtesy of letting them know what goes on.

MR. BRYDGES: If I may, on the same subject.

THE PRESIDENT: Senator Brydges.

MR. BRYDGES: You said it many times and in many ways; Mr. Weinstein has said it many times and in many ways, and I have said it also.

THE PRESIDENT: You are right.

MR. BRYDGES: And I think it is ungracious of any member who has a proposition to which he wants to direct an amendment, who knows about it in advance—I can see things happening at the last minute, but here we have had a proposition on the calendar for weeks. Now, certainly we deserve the courtesy of having copies of these proposed amendments.

THE PRESIDENT: You are absolutely right, and the next time this happens, and I am sure I can have the consent of the leadership, the proposition will be adjourned.

Now, Mr. Bromberg.

MR. BROMBERG: Mr. President, I will let Senator Greenberg speak for himself, but I would like to speak with regard to the amendment which I proposed. It was not until today, this morning that—well, it was last night, as a matter of fact—or no, it was this morning at a meeting that I first became aware that the amendment was going to be offered. Up until this morning the proposition before this house did not contain the prohibition with regard to undistributed profits tax. The question was not before this house. It was only this morning that the committee voted out a different bill, therefore compelling Senator Greenberg to introduce his amendment at the very last minute, and therefore leaving no choice to anybody who would bring before this house the question of undistributed profits except to bring in an amendment at the very last moment, and as soon as I was able I informed the leadership.

Thank you.

MR. GREENBERG: May we have a vote on the amendment?

THE PRESIDENT: I am aware of what you say, Mr. Bromberg, but I am not talking particularly about your amendment to the amendment. I am talking about any amendment. If the leadership has not been given previous notice, the matter will be adjourned and that will be the rule from now on.

Now, is there a discussion on the amendment or the amendment to the amendment? Both are being discussed.

MR. DeHOYOS: Mr. President.

THE PRESIDENT: Mr. DeHoyos.

MR. DeHOYOS: As late as yesterday the Committee on Economic Development voted unanimously, with one abstention, they voted to maintain this prohibition of taxing of undistributed profits to maintain the competitive position of the State of New York in attracting new industry.

THE PRESIDENT: Any other discussion on either the amendment of Senator Greenberg or the amendment to the amendment of Mr. Bromberg?

The question therefore occurs upon the adoption of the amendment to the amendment. The Secretary will—

MR. BROMBERG: May I ask for a slow roll call?

THE PRESIDENT: Will twenty rise to support the request for a slow roll call?

Apparently twenty are standing. The Secretary will call the roll. This is on the amendment of Mr. Bromberg to the amendment of Mr. Greenberg, and if this amendment prevails, if the amendment to the amendment prevails, it carries with it the amendment.

I trust that everybody understands that.

The Secretary will call the roll.

MR. BRYDGES: A point of information. What is the quorum today?

THE PRESIDENT: One hundred seventy present. That is eighty-six.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 44; noes, 112.

THE PRESIDENT: The amendment to the amendment offered by Mr. Bromberg is defeated.

The question now occurs upon the adoption of the original amendment offered by Senator Greenberg.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 162; noes, 5.

THE PRESIDENT: The amendment is adopted. Now, to follow the original procedure as agreed upon—

MR. WILLARD: Mr. President.

THE PRESIDENT: Mr. Willard.

MR. WILLARD: Could I interrupt the proceedings for just a minute to tell you that seated in the gallery on your left side is the charming wife and lovely daughter of our fellow delegate, John E. Dickinson. I wish you would welcome them to the proceedings of the Convention.

THE PRESIDENT: The Chair is very pleased to welcome Mrs. Dickinson and her daughter to the deliberations of the Convention and trust they will enjoy the same.

THE PRESIDENT: Therefore, in accordance with the original agreement, we will now take up calendar number 6, which is the first one on the calendar, and calendar number 20, which is the one that the amendment was just offered on, and we will discuss both and take separate votes on them.

MRS. GUNNING: Mr. President.

THE PRESIDENT: Mrs. Gunning.

MRS. GUNNING: Mr. President, as a matter of procedure, I would ask that you consider 20 before 19.

THE PRESIDENT: They are going to be considered together.

MRS. GUNNING: Pardon me?

THE PRESIDENT: They are going to be considered together and separate votes will be taken on each.

MRS. GUNNING: My reason for it is that if 19 should fail, then 20 would be left without any provision for an exemption of intangible property.

THE PRESIDENT: Well, Mrs. Gunning—

MRS. GUNNING: And, therefore, I feel that we would be voting more logically and sensibly and in accordance with our desires if we were assured before we voted for 19 that 20 had been accepted.

THE PRESIDENT: Senator Greenberg, is there any objection to that? I thought we were discussing number 6, the top of the page, and 20.

MR. GREENBERG: Mr. President,—

MRS. GUNNING: Excuse me, sir. We would now have considered 19—

THE PRESIDENT: Are there three of them?

MR. GREENBERG: Mr. President.

THE PRESIDENT: Yes.

MR. GREENBERG: It was my intention to explain all three of them collectively because otherwise you just do not know where you are at, and I think that perhaps we won't know when I am through explaining these three measures collectively, but I think we have a better chance of understanding the picture if we talk about the three of them together and then proceed to vote on any one of them.

THE PRESIDENT: The order that we will take the vote on does not make any difference to you then?

MR. GREENBERG: That is correct.

THE PRESIDENT: All right, Mrs. Gunning, if that will satisfy you—

MRS. GUNNING: That will satisfy me, Mr. President.

THE PRESIDENT: We will take up all three and will discuss them, and separate votes will be taken on each, and the order of voting will be decided upon later.

MR. GREENBERG: Mr. President, ladies and gentlemen, these three measures, taken together, if adopted by the Convention and by the people, will continue as the basic, fundamental Constitutional Law of the State of New York, as it now exists, with respect to the taxation of intangible personal property for residents and non-residents, with respect to the taxation of undistributed profits, and also with respect to the exemptions, constitutionally enjoyed now by charitable, religious and educational institutions.

Now, I want to make it absolutely clear beyond any peradventure of any doubt, regardless of what may have been said in the past or what anyone's understanding may have been, and without in any way trying to explain why it was or how it came about, the fact is that if these three amendments or these three propositions are adopted, that there will continue in the State of New York the present prohibition against taxing anyone's bank account, anyone's securities, or anyone's mortgages; they will not be taxed when these three proposals are finally adopted. Now, that is absolutely, unequivocally and without any reservation of any kind being made for the record and with the hope that the news media will broadcast it from Montauk Point to Niagara so that the fears and suspicions of all of our citizens will once and for all be laid to rest and there will be no further need of concern in that regard.

Now let me repeat and let me go over what each one does.

The first one on the calendar, number 6, continues the protection which we have afforded by constitutional provision against the taxation of intangible property owned by non-residents and it is done by defining the situs, the location of intangible property, even though physically within the boundaries of the State of New York. The situs is where the owner has his domicile so that anyone living in Florida, California, Illinois, Hawaii or Alaska can have his intangible personal property physically within the State of New York, generally in safekeeping in custody of a bank, and not have any fears that that property can be taxed by the State of New York.

It goes on further, furthermore, that where such property is held in trust by a New York state trustee but for the benefit of people whose domicile is outside the state of New York, that property is not subject to tax. That is what number

6 does, and it does not do it any more or any less or in any way different than what the present Constitution provides.

Now, number 20 on the calendar, proposition No. 1352 as amended this afternoon, is the proposition which specifically is related to the prohibition against taxing intangible personal property of residents and it continues that protection and that prohibition in the exact same language now found in our Constitution; and this prohibition—and please pay heed to what I am about to say because it is relevant to the discussion of the third proposition before us, and that was part of the difficulty in getting these things out finally in proper form: this prohibition against taxing intangibles of residents applies not only to individuals, to corporations, but applies also to the three kinds of institutions—charitable, religious and educational—to which further reference is made in other taxing areas in the third of the three proposals which we have before us.

But I do want to add at this time so that there be no question in the minds of the delegates at least, because I want to assure you that those in our State who are very much concerned with this proposition understand this fully and we are going along with what we may have now, but there is no present constitutional prohibition against taxing of income produced by intangible personal property and we are not changing that and we are not changing the statutory right which the Legislature has today, to impose transfer taxes, debt taxes, sales taxes—we are in no way curbing, prohibiting, changing the law in those respects; we are simply continuing the prohibition against ad valorem (value) taxation of intangible personal property or the ownership and possession thereof, which is what you mean when you say “Intangible personal property shall not be taxed.”

Now, of course, you are all aware that we also have in this proposal the prohibition which relates to the non-taxation of undistributed profits. That is the portion that delegate Bromberg’s amendment referred to; it was defeated. And, therefore, if the proposition is passed, it will contain that prohibition against the taxation of undistributed profits.

Now, the third one, ladies and gentlemen, is 1351, which is No. 19 on the calendar. Here, before I interpolate by making any explanations of my own, I want to read the report which was adopted by the committee and as part of the record of this Convention.

(Reading) “This Section is derived from the second paragraph of Article 16, Section 1, of the existing constitution and continues the present powers of the Legislature with regard to the granting of exemptions and the alteration or repeal of such exemptions. Exemptions may only be granted by general law and may be thereafter altered or repealed except”—and this is the very important part of this proposition—“except those exempting real or tangible personal property used exclusively for religious, educational or charitable purposes and only by any corporation or association organized or conducted exclusively for such purposes. As to this category of exemptions, the Legislature, once it exercises its inherent power to grant such exemptions, is thereafter prohibited from reducing or repealing such exemptions. The prohibition against alteration or repeal applies only to that portion of the real property or tangible personal property owned by such corporations or associations which is used exclusively for their purposes.

“Furthermore, while exemptions from special ad valorem levies or special assessments may be granted by statute”—and let me by way of interpolation say those words, “ad valorem levies or special assessments” are now used in the tax law, and that is why we used them in this committee’s report. They use it in the real property law, not the tax law. They continue to be subject to the power of the Legislature to alter or repeal them, as new exemptions may involve the taxation of income from property or the taxation of the sale or transfer of property or other event.

The Committee has added the word “tangible” before the phrase “personal

property" because intangible personal property may not be taxed as provided for in one of the other proposals.

Now, let me see if I can clarify in my own humble way what this is all about. To begin with, the proposal contains what is now in the constitution: "Exemptions from taxation may be granted only by general law." That is now the constitutional law of the State of New York, that the Legislature may grant exemptions, but only by general law, and there is very good reason for that, and unless some delegates are unaware, I am sure somebody will explain that further. But it is the law now, constitutional law, and exemptions can only be granted by statute.

And then we go on to say, as the present constitution says, that "these exemptions granted by the Legislature may be altered or repealed," which is the inherent prerogative and right, and should be, of the Legislature.

But we say further that "with respect to educational, religious, charitable institutions, once an exemption has been granted, it cannot be altered or repealed or modified," and, of course, it refers to real property or tangible personal property used exclusively by these institutions for their purposes.

Now, as of today, under Section 420 of the Real Property Law, these institutions do enjoy freedom from taxation of the real estate which they use for their own purposes.

Now, remember, if any of these institutions, as many of them do, own real estate which is not being used for their purposes, that real estate is subject to real estate tax. We do not have a prohibition against taxing real estate owned by these institutions in the constitution in the same manner as we have such a prohibition for intangible personal property. The prohibition which these people enjoy now stems first from the statutory freedom which they have under Section 420 of the Real Property Law, the statutory exemption, coupled with the constitutional prohibition against altering or changing of such an exemption once it has been granted.

Now, I want to emphasize again that this prohibition against altering or repealing applies only to that portion of the property owned by these institutions which is used exclusively for their purposes. If it is not being used for their purposes, even though an exemption may be granted, it can be altered or repealed.

Now, furthermore, these institutions do not enjoy any constitutional exemption from taxation with respect to income, sale or transfer of property or other events. They do not enjoy such freedom from taxation today and we are in no way or in no manner changing the constitutional law in that respect.

I also want to remind you that we have added in this section the word "tangible" before "personal property" because without it we would have the word "property" there alone and we have taken care of intangible personal property in another proposition and, therefore, this section with respect to personal property applies only to tangible personal property.

Now, I might say by way of information that there is no statutory exemption today with respect to tangible personal property other than the fact that we have no tax laws on our books taxing tangible personal property. These people are not treated any differently than anyone else insofar as I know with respect to tangible personal property, but in the State of New York today we do not have any tax on tangible personal property.

Mr. President, I think that to the best of my ability I have made it clear what these three proposals do and I hope that each of them will be adopted in the form in which they have been proposed.

MR. CORNELL: Mr. President.

THE PRESIDENT: Senator Cornell.

MR. CORNELL: I have listened alertly and intently to what Senator Green-

berg had to say on these three propositions. I want to say I am very happy to concur. He left out one word, but other than that—an unimportant word—but other than that I concur with everything that Senator Greenberg has said and with the reports that have been filed by the committee. Whatever differences there were—and I am not going into detail—that have existed over the past two or three weeks, have been matters of form and method; our objectives have been identical in that we wanted to preserve the rights and the obligations of those subject to intangible taxation as well as the exemptions of the religious, educational and charitable corporations. Our end objectives were the same. We differed only as to the methods, and I am happy to say that there was a meeting of the minds pretty much within the last twenty-four hours and we have all joined in one happy family in approving these propositions, and I am prepared to recommend them to you.

MR. BROMBERG : Mr. President.

THE PRESIDENT : Mr. Bromberg.

MR. BROMBERG : Mr. President, I rise in opposition to these three propositions, but before I speak I would like to express, since this is the last time I am going to speak on these tax items, my gratitude to the Chairman and Vice Chairman of the Committee on Taxation and Finance and to the staffs, both majority and minority, for their teaching ability, for their erudite reports and for their intensive explanation and exploration of this entire area, for when I came to this Convention and became a member of this committee I knew next to nothing about the tax structure and operation of the State, constitutional and legislative. These people have explored this area so carefully as to have made me familiar enough with it to be able to deal with it and, therefore, for the record, I would like to express my thanks and gratitude to them.

However, they have taught me enough so that I disagree with their conclusions. In general, I cite that the history of this State has shown no need for these restrictions on the Legislature. Specifically with regard to tax exemptions, I think nobody here—I certainly do not—question the policy of tax exemptions for private charitable, religious and educational institutions. It is a good one. There are problems which arise under it—the problems of narrowing the local tax base, the problem of a local community which bears the burdens of supporting an institution which may have statewide and nationwide implications but which may be a great burden upon a particular community, and mostly the problems of the appropriate way of which the Government of the State of New York can aid these institutions.

I suggest, therefore, that this matter of exemption is not appropriate to the constitution but is more appropriate a matter for legislative action, and what we have in the constitution now, and what is proposed to be continued, is a grossly incomplete expression of policy. And I see no reason to continue one partial policy.

Again, I cite as an example these instances are income tax free, and we all agree that this should be left to the Legislature. The Legislature can much more hurt these institutions with a withdrawal of income tax exemptions, and nobody seems to be concerned, not even the institutions who have expressed themselves in favor of this, with continuing the present constitutional strictures and not enlarging them. I suggest once again in this area we are continuing an irrational prohibition in the area of taxation of intangibles.

I agree that the taxation of intangibles ad valorem would be bad policy but again I suggest that it is irrational to continue such a prohibition in the constitution when the Legislature's taxing power and police power are so great that this particular prohibition, this particular protection is essentially meaningless. I suggest that what we have done or what we will probably do with these three propositions, as we did with the propositions concerning the

banks and the proposition concerning the exemption of pensions from income taxation, is only to prevent the orderly management of the fiscal affairs of this State by the Legislature and the Governor.

Somebody said it here in this Convention, or at a conference, but I think that we should really attempt to bear in mind the fact that essentially the Legislature of this State, with the concurrence of the Governor, will govern the State, it has powers almost literally of life and death over us; and I suggest that, therefore, we should not continue irrational partial fiscal prohibitions.

Thank you.

MR. SOBEL: Mr. President.

THE PRESIDENT: Judge Sobel.

MR. SOBEL: I rise to support two of these propositions and give rather lukewarm support to the third. I will speak about the most important one first.

As I said a few minutes ago, the 1938 Convention was very much concerned with reporting out a tax article and they sought high and low to find something to include within the tax article. Otherwise they were very much afraid that the Convention might criticize this rather important committee for doing nothing. The first thing they selected to include as a freeze in the Constitution was a statute that existed in this State since 1898 and that is a statute which granted general exemptions to charitable, religious and educational organizations. Now, nobody on the floor of the Convention in 1938 disputed freezing that provision in the Constitution beyond the reach of the Legislature. The Committee said these organizations are discharging social obligations which the State would have to assume and are, therefore, reasonably entitled to constitutional exemption, emphasizing the constitutional, and some of the very distinguished members of the 1938 Convention spoke in favor of freezing this exemption for the benefit of these great institutions. Anybody who would vote against freezing such an exemption would have to feel that the immense, immense contribution that these organizations have made to our national life and our State life did not deserve this kind of treatment. It seems to me that whatever they ask they are entitled to receive. I might point out, because the Chairman hasn't explained this, that there are some corporations which are beyond the action of the Legislature either by statute or by constitutional amendment and those are the organizations—and they have some billions of dollars worth of property in this State—who got private charters from the Legislature prior to 1898. They are protected by the impairment clause of the United States Constitution. They are not only protected with respect to the property that they use in connection with charitable, educational or religious purpose, but also with respect to all the property they had at the time they were granted this exemption and all the property that they acquired. Therefore, some of the largest buildings in the immense areas of New York City are exempt because these are beyond even the reach of the amendment to the Constitution of the State of New York.

Now I want to talk very briefly about the exemption of tangible-intangible personal property. California has just gone through a dreadful experience in which some 30 assessors in 30 different localities were indicted, convicted and sent to jail. They had a tax on both tangible and intangible personal property. The experience they had paralleled the experience we had back in the early 1920's. We just weren't able to collect the tax, there was too much fraud and, therefore, in 1930 we passed a law, not a constitutional amendment, saying that resident or non-resident, tangible or intangible, all personal property was exempt from ad valorem taxation. It was this provision that these gentlemen took from the statute and decided to freeze into the Constitution. This was for the purpose of giving insurance to the large trust companies in New York City that their property, the intangible personal property in the nature of stocks and bonds and bank accounts, too, would never be taxed. I have no strong feeling

about that. I don't think it belongs in the Constitution, but if they think they need assurance, and certainly they make a very, very great contribution to the economic life of the State, then they are entitled to constitutional exemption.

Now, I want to turn to the third proposition and this concerns non-residents. This provision was also reported by the Committee on Taxation, but it caused quite a fuss on the floor because as it read it seemed to exempt from taxation the intangible personal property in the nature of stocks and bonds owned by foreign corporations but actually used in the business in the State of New York. Therefore, it would exempt them from income tax if it were read literally. Also there was some question as to whether or not this phrase would exempt them from the estate transfer tax. To that phrase was added a subsequent phrase about trustees which was contrary to the decisions of the United States. It is a complicated matter. The United States Supreme Court four times changed their minds as to whether intangible personal property should be taxed at the domicile or at the situs, and they finally concluded at domicile. When this was passed they had passed on domicile. In 1939 they changed their mind and they said that domicile doesn't control, both control. Each state can tax double taxation for death taxes under domicile and under situs, and at that time we had a Commission on Interstate Cooperation in this State and we sat down with all the other states and worked it out so that each would agree not to tax the other and therefore we have a statute, a mutual statute affecting most of the industrial states which conforms with this constitutional provision. It probably doesn't belong in the Constitution, but it has worked out, it has permitted income tax, of course, on the intangible personal property and it has permitted a tax on the transfer by non-residents of certain property which were used to reduce income within the State of New York. It has done no harm. I understand that the Tax Department assured Senator Greenberg, as they assured me, that they are not at all concerned about this language in the Constitution. I say again it doesn't belong in the Constitution but as long as it is there I think it would be a mistake to take it away.

MR. ROONEY: Will Senator Greenberg yield for a question?

THE PRESIDENT: Senator Greenberg, will you yield for a question?

MR. GREENBERG: Yes.

MR. ROONEY: Do I understand from all this discussion here this afternoon that we are in effect leaving intact Section 1 of Article XVI by Propositions 1336 and 1351—that would be Section 1 taking out five words—and in Proposition 1335 and 1352 we are reenacting in total Section 3 of the present Constitution and none of this changes anything in the Constitution as it is now constituted? Is that correct?

MR. GREENBERG: I think you are incorrect in one respect, Mr. Rooney. There is a proposition on the calendar, No. 1336—

MR. ROONEY: It is going over, but it is the first part of Section 1 and just leaves out five words.

MR. GREENBERG: Well, that one is going over because we are not yet ready to act on it.

MR. ROONEY: Yes. Well, I understand that, but the two taken together, all they do is take out five words in Section 1. I don't understand why it is going over and what the big to-do is about. We are just reenacting what we have had before. Is that correct?

MR. GREENBERG: I don't agree with your remarks with respect to what the to-do is about. This to-do has taken weeks and weeks of study, conferences, meetings, trying to satisfy people all over the State and we hope we have

satisfied them now. But as to the first paragraph of Section 1, that is going over because it is tied in with something that the Committee on Local Government has to decide and until we know what Local Government is going to do, we cannot pass the first paragraph of Section 1.

MR. ROONEY: All right. Thank you.

MRS. GUNNING: Mr. President.

THE PRESIDENT: Mrs. Gunning.

MRS. GUNNING: Mr. President and Fellow Delegates, I wish to address myself to the objections which were made by Mr. Bromberg, not for the purpose of discussing his philosophical concept concerning what should go into a Constitution, but because I would like to suggest to you delegates that at this particular time in our history we should continue unchanged the provisions that would prohibit the Legislature from altering or repealing those exemptions for the charitable, religious and educational corporations, and the point I wish to make to you ladies and gentlemen is that there has been a new field in this charitable and educational group, and I refer specifically to those Negro groups who are engaged in self-help programs. They are intensely concerned with their personal advancement, the advancement of their people through these self-help programs. They are watching what we are doing today with considerable concern. I am especially interested in one of these organizations and I have been receiving telephone calls which would indicate their concern that there be no change so that they can feel that they can continue their work without any worry about the Legislature making any changes in this particular regard.

We have in Queens, as we have in all other sections of the City, a most delicate situation at this time. Our people are concerned and particularly in those areas where there is a danger of any kind of a disturbance. One of the groups with which I am especially interested has set up a bus line in an area where people have tried for 24 years to get a cross-town bus line. It develops that it is not strictly legal. The City is therefore intervening that it is not franchised and has other objections. The extent of the interest that these people have in these particular problems is evidenced by the fact that they are taking the keenest interest and are evincing the greatest objection that their bus line should be discontinued when they have worked so hard through their own efforts to set it up. This is the kind of objection which they are watching for and are hoping that this Constitutional Convention will not do anything which would limit in any way their future plans.

I therefore urge you, ladies and gentlemen, to vote for these particular amendments even though you may have, as Mr. Bromberg has, some doubts as to their place in the Constitution, because the Constitution is where all of the people of the State, particularly those who are not too knowing, not too sophisticated but are emerging on their own plans for self-help, and I hope that you will give this matter your consideration when you consider how to cast your vote and that you will vote for these amendments as they are presently presented.

MR. HORNSTEIN: Mr. President.

THE PRESIDENT: Mr. Hornstein.

MR. HORNSTEIN: I would like to speak in favor of all three propositions. I would like to point out that Proposition 1335 and 1352 together restore the financial climate that was covered in Article XVI, Section 3 which made this State the great financial capital of the world, and I think that everyone should vote in favor of it to continue such climate and to continue the great financial center that we have here in New York State. I ask you to vote in favor of 1351

because we certainly want to continue the exemptions for religious, educational and charitable institutions that contribute so greatly to our social benefits in this great State of ours. I therefore urge all of you to vote in favor of all three propositions.

THE PRESIDENT: Any further discussion on the three propositions?

We will now take the vote in the order of calendar No. 20 first, calendar No. 19 second, and calendar No. 6 third.

The question occurs upon the advancement of the proposition 1352.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 166; noes, 1.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the committee on Style and Arrangement.

The question now occurs upon the advancement of the proposition 1351.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 166; noes, 1.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the committee on Style and Arrangement.

THE PRESIDENT: The question now occurs upon the advancement of Proposition 1335. The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 166; noes, 1.

THE PRESIDENT: The proposition is advanced to the order of third reading and submitted to the Committee on Style and Arrangement.

Committee notices.

THE SECRETARY: Committee on Bill of Rights and Suffrage will meet in Room 514 one-half hour after the session.

The Inter-Government Relations Committee meeting scheduled for today has been cancelled.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I now move the Convention stand adjourned until Monday, August 7, at 2:00 P.M.

THE PRESIDENT: So ordered.

(Whereupon, at 3:58 P.M. the Convention was adjourned to Monday, August 7, 1967 at 2:00 P.M.)

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### MONDAY, AUGUST 7, 1967

THE PRESIDENT: Will the Convention please come to order: Will the delegates please assume their seats?

REV. MATTHEW H. CLARK: Our Father, we ask Your blessing on the people of New York and the men and women who represent us here. We pray for these honored delegates today and ask: that they may know more and more that their first responsibility is service to the people; that they be guided by the knowledge that we are brothers under the common fatherhood of God; that they

may so reconcile individual liberty with the common good as to guarantee and promote our God-given rights; that the fruit of their labor here might read like a song in praise of the dignity of man. Amen.

THE PRESIDENT: The Secretary will call the roll.  
(The Secretary called the roll.)

THE PRESIDENT: The Secretary will read the journal of August 2, 1967.

THE SECRETARY: In Convention on Wednesday, August 2, 1967—

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: Mr. Weinstein.

MR. WEINSTEIN: I move we dispense with the further reading of the journal and the same stand approved.

THE PRESIDENT: Without objection, so ordered.  
Message from the Governor.  
The Secretary will read.

THE SECRETARY: "To the Constitutional Convention:

The capacity of our modern society to deal effectively with the control of crime and to preserve law and order is challenged as never before.

Our ability to meet this challenge is significantly strengthened by the tools of science and technology now available to society.

In a period of spiraling crime rates and at a time when organized crime is flourishing in narcotics traffic, gambling, loan sharking and the corruption of legitimate businesses, it is essential that we make maximum use of modern science and technology for the protection of society against crime.

I strongly urge that your Honorable Body include in your proposals for a new or amended State Constitution, general authority for the Legislature to provide for the carefully controlled use of wiretapping and electronic surveillance under judicial supervision with adequate safeguards for the protection of individual liberties.

Wiretapping and electronic surveillance of criminal elements are perhaps the single most effective weapons available today to society in the fight against organized crime. Article I, Section 12 of the present State Constitution has provided general authority for court-authorized wiretaps where there is "reasonable ground to believe that evidence of crime may be . . . obtained." This provision, however, and the statutory law of the State which covers electronic surveillance as well as wiretaps have been rendered obsolete by the recent decision of the Supreme Court in the case of *Berger v. New York*.

I recognize, as did Governor Lehman when he recommended to the 1938 Constitutional Convention the adoption of the present provision authorizing wiretapping, the need to assure careful control of this technique of law enforcement so that it will remain a servant of society and not its oppressor. However, I am confident that we can safeguard individual liberties and at the same time make proper use of the tools of technology in the fight against crime.

Therefore, I strongly support the conclusion reached by a great majority of the members of President Johnson's Commission on Law Enforcement and Administration of Justice that ". . . legislation should be enacted granting carefully circumscribed authority for electronic surveillance to law enforcement officers to the extent it may be consistent with the decision of the Supreme Court in *Berger v. New York*, and, further, that the availability of such specific authority would significantly reduce the incentive for, and the incidence of, improper electronic surveillance."

I urge your Honorable Body to provide authority for wiretapping and electronic surveillance under appropriate Constitutional safeguards. Such action

on your part and approval by the people will facilitate legislation which I intend to propose at the next Session of the Legislature which will meet the criteria set forth by the United States Supreme Court—legislation which will carefully safeguard individual liberty and at the same time recognize the right of society to protect itself through the use of this valuable device for effective law enforcement.

/signed/ Nelson A. Rockefeller''

THE PRESIDENT: Calendar of the day.

Propositions on the order of second reading, page 2. The Secretary will read.

THE SECRETARY: 1333, by the Committee on Executive Branch. A proposition to amend article five of the constitution, in relation to establishing a department of criminal justice.

MR. BOTEIN: Mr. President.

THE PRESIDENT: Mr. Botein.

MR. BOTEIN: Wednesday, August 9th.

THE PRESIDENT: Lay it aside for Wednesday's calendar.

THE SECRETARY: 1336, by the Committee on State Finances, Taxation and Expenditures. A proposition to insert a section in the article on taxation in the proposed constitution, in relation to the power of taxation.

MR. GREENBERG: Wednesday.

THE PRESIDENT: Lay it aside to Wednesday's calendar.

THE SECRETARY: 1365, by Rules. A proposition to repeal article three of the constitution relating to the legislature and inserting a new article, in relation thereto.

THE PRESIDENT: Ready. Lay it aside.

THE SECRETARY: 1368, by Rules. A proposition to insert a section in the article on state finances of the proposed constitution, in relation to the preparation of the state budget.

MR. GREENBERG: Wednesday.

THE PRESIDENT: Laid aside until Wednesday's calendar.

THE SECRETARY: 1369, by Rules. A proposition to insert a section in the article on state finances of the proposed constitution, in relation to payments of state moneys.

MR. GREENBERG: Wednesday.

THE PRESIDENT: Lay it aside until Wednesday's calendar.

THE SECRETARY: 1370, by Rules. A proposition to insert a section in the article on state finances in the proposed constitution, in relation to restrictions on content of appropriation bills.

MR. GREENBERG: Wednesday.

THE PRESIDENT: Lay it aside for Wednesday's calendar.

THE SECRETARY: 1371, by Rules. A proposition to insert a section in the article on state finances in the proposed new constitution, in relation to authorizing the legislature to establish a fund or funds for tax revenue stabilization reserves; regulating payments thereto and withdrawals therefrom.

MR. GREENBERG: Wednesday.

THE PRESIDENT: Laid aside for Wednesday's calendar.

THE SECRETARY: 1373, by Rules. A proposition to include a section in the appropriate article of the proposed constitution, in relation to securing and protecting certain rights of the people.

THE PRESIDENT: Ready and laid aside.

THE SECRETARY: 4-B, by Mrs. Saxe. A proposition to repeal section three of article eleven of the constitution, in relation to prohibiting use of public property or money in aid of denominational schools, and to insert in the proposed constitution two new sections, in relation to freedom of religion, speech, press, assembly and petition, and in relation to judicial review of the provisions of the constitution.

THE PRESIDENT: Ready and laid aside.

THE PRESIDENT: Laid aside calendar. The Chair recognizes Judge Shapiro.

MR. SHAPIRO: Mr. President, Fellow Delegates: I have the privilege and pleasure to present to you a new article proposed to be incorporated as Article III in the State Constitution dealing with the powers and privileges and prerogatives of the Legislature. I think I should say at the outset that I have seldom, if ever, met a more dedicated group of men than those who are on the Committee on the Legislature. We fought with might and main against each other when we disagreed, but we all were of a mind single to do what was right for the people of the State of New York and to get a legislative article of which we could all be proud and which would not be a code of ordinances but which would be truly a constitutional provision for the management and regulation of the powers of the Legislature. We started out with the idea that the days of robber barons are over; that the Legislature of the State of New York is and ought of right to be a respected body and that it should have all of the residual powers which were not taken away from it by the Constitution proper, and that the Constitution, as I said, should not be a conglomeration of statutes or a code of ordinances but in truth and in fact a Constitution.

We did not have in our committee, in most cases, any division on party lines. At the very outset I want to say to you in all candor and all frankness that there was a great deal of rapprochement between Mr. Carroll, the Vice-Chairman of the committee representing the Republicans, and myself. We sat down, we talked things over, we let our hair down and we agreed that the people of the State of New York are entitled to the best kind of Article III that we could give them. And so except for a small circumscribed area where we could not see eye to eye, the result of the article here proposed is almost the unanimous product of all of the members of the committee.

I thought as we went along and I saw various propositions proposed to this body, that I had some difficulty in following what was proposed because I thought that they were sprung on us anew, I hadn't had a chance to study them, they weren't put down in such fashion that I could compare the new proposals with the old ones and ascertain the reason for the proposed changes. So you will note that on your desks on Wednesday you found a proposed Article III discussed side-by-side with the changes and the reason for the changes, so that you could have adequate opportunity to study it and familiarize yourself with it, and by dint of the energy and perspicacity of the minority members of the Democratic Party on my side, you also have the opportunity to observe and read a very well prepared and collated minority report.

Now, you have had since last Wednesday to go over these things, and so I

think that I can go right into the proposed legislative article itself. I shall deal only briefly and cursorily, unless you direct otherwise, with those cases in which no changes have been made and shall restrict my discussion primarily to those in which there have been substantive changes.

Section 1 combines the present Sections 1 and 13 without substantive change and provides for the manner in which a bill shall be headed. Section 2 is a new section which provides that the present district lines are continued until re-apportionment takes effect on the 1970 dicennial census.

Section 3—and I am going to ask you to listen very carefully with reference to this—is the only section in the proposed Article which comes before your body with the express approval and recommendation of a majority of the members. We discussed long and arduously the question of tenure of the members of the Assembly and of the Senate. There was a diversity of opinion on the subcommittee by a narrow margin—it was 4 to 2; on the principal committee, there was a majority view of 4 and 4. And for a while, that was incorporated tentatively into the recommendations of our committee. And finally it was changed to 2 and 2 upon this theory: that none of the propositions, 2 and 2, 4 and 4, or 4 and 2, could achieve the necessary 14 majority vote; and so we agreed to vote it out as it is presently in the Constitution for a tenure of the legislators of 2 and 2 without recommendation. So in that regard, there is no change in Section 3.

There is, however, one change there: The present Assembly consists of 150 members; no change. The present Senate consists of 57 members; and by agreement with the other side, it was agreed that 60 would be just; that the Assembly of 150 would be two and a half times the size of the Senate, that it would be a very fair numerical redistribution and so it was agreed that 60 members should constitute the Senate. That is a change from 57 to 60.

The previous provision of the Constitution was not mandatory. It has a variability about it that permitted the Legislature from time to time to change the composition of the Legislature either up or down—more Assemblymen or fewer Assemblymen, more State Senators or fewer State Senators. We felt that that was not a fair proposition, that the Legislature could politically play with that and that we ought to have a fixed ratio of Senators to Assemblymen. And so we changed the 57 to 60. One of the motivating reasons for that was—and that was espoused, I think, by the Republicans on the other side—that in the sparsely settled districts upstate, a Senator had to cover a great many counties and by increasing the number of State Senators, that would narrow the geographical area which he would have to cover and in which he would have to run.

Now Section 4. Let me go to Section 5 first, if I may, because I think it makes for better order of argument. When we came to the question of redistricting and reapportioning the Senate, the Assembly and the Congressional districts, we were, of course, hitting the gut proposition of which this Committee had jurisdiction. That goes to the very heart of the existence of the political parties in this State. It goes to the very core of fair and equal representation by the parties and the right of the people to be fairly and adequately, numerically represented in their Legislature and in their Congress.

Both sides—and when I say both sides, perhaps I should say three sides, because there was a Republican side, there was a Democratic side and Alex Rose, for whom I have a great affection, represented the Liberal side—we all agreed that that was the outcome to be sought, that that is what we wanted.

Now, sometimes the theory is hard to agree upon and to put into words, but finally I think we hit upon a proposition which almost everybody on the Committee was agreeable to, as to the guidelines that should be used in reapportioning the districts; and so we provided in Section 5 certain standards which read as follows:

“(a) Districts shall be as nearly equal as practicable in total population as determined by the federal decennial census.”

You will notice we say “federal decennial census” because there was some belief or theory that the Federal Government may have a five-year census, and, of course, it would be impracticable to apportion or reapportion the districts every five years. So we provide for the federal decennial census and we provide for total population as the basis, not citizen population; it makes it cheaper to keep an account of and in the long run it is fairer to everybody concerned.

“(b)”—and I am going to ask you to listen to this very carefully—“Districts shall be contiguous and compact; and, wherever practicable, boundaries of pre-existing political subdivisions and natural geographical boundaries shall be used as district boundaries.”

By that we mean cities and counties, villages and towns should not be cut up where there is enough population within them to make out the census requirements laid down in the Constitution.

And then we came to the big question, the heart and core of redistricting, and that is how do you redistrict unselfishly, how do you redistrict so that you as a Republican or I as a Democrat do not gain partisan advantage? How do you redistrict so that the racial minority groups are not taken advantage of and cut up like Swiss cheese and holes are punched into a district? We played around with the words “smallest practical perimeter,” and we played around with all kinds of semantic phrases, and then we were talking about prohibiting gerrymandering and the kind of gerrymandering that was done in some districts where racial groups and minority groups were cut to pieces unfairly and improperly, and we finally hit upon the idea that there was a better way of preventing gerrymandering than by saying so right in the Constitution, and so we hit upon the plan of using six words and saying: “Gerrymandering for any purpose is prohibited.” And to make it crystal clear what we mean by gerrymandering, we will append and we do append to the explanation of the word “gerrymandering,” if it is adopted by you ladies and gentlemen, the meaning is to be not the old meaning of partisan political gerrymandering but the present, 20th-century, latter-day 20th century meaning of gerrymandering, as meaning unfair districting aimed at any particular group, political, racial, religious, economic or any other. Now, insofar as language can contain a devious attempt to improperly redistrict unfairly by gerrymandering districts, I think this language with its explanation accomplishes the purpose.

I might say to you that our intensive research reveals no State Constitution and no statute which uses the explicit and express words “gerrymandering” to prohibit the very thing that we are seeking to prohibit here. Now, that is the article and those are the guidelines.

One other subdivision provides that no city block shall be divided. I do not think anybody in his right mind would try to divide a city block, but sometimes in the past redistricting they have not been of their right minds, so we provided that no city block shall be divided, and we have excluded the words “enclosed by streets or public ways” because sometimes you get a city block which in the context of redistricting will not really be a city block; you might have a railroad running right through it, so it would not be a city block. You might have a bi-section or some other effective divider, so while it may be considered a city block for one purpose, for purposes of reorganization it should not be considered a city block.

Now I want to commend the members of the committee and ask you for your approval and approbation of what they have accomplished in this Section 5. I think it is a step forward, a giant and tremendous step forward in the right direction to see that all strata of our population, all segments of our people have a fair and equal chance to be represented when they go out to vote and to choose their elected representatives.

Now we go to Section 4. Section 4 says, after you have these guidelines, who is going to use them, who is going to play with the guidelines. And you will recall that originally when I proposed a simplified Constitution to all of you and felt that you should adopt it and go home and save yourselves about six months' labor, I provided in that proposed Constitution that the legislative leaders, the minority and the majority, the President Pro-Tem of the Senate and the Minority Leader of the Senate—that would make it a Republican and a Democrat—and the Speaker of the Assembly and the Minority Leader of the Assembly—that would make it a Republican and a Democrat—should appoint a commission each with one man so you would have a four-man commission, and then that the four should appoint a fifth man. There was some question as to whether he should have the casting vote or an outright vote or whether he should be chosen, but the original plan that we have had in mind was of a commission. The committee worked very hard, long and arduously on this proposition; it went through various phases; and they finally came up with the proposition that you now find in Section 4, which I say to you was on June 27, 1967, unanimously voted for by the committee.

If anybody wants to disagree with that, I have the records here of Mr. Ashmead and of Mr. Brady, who kept the records of the votes. It was unanimously voted for; later on some people had second thoughts, as they have a right to do. I have had second thoughts on some of the propositions that I had in my Constitution. And so today this is the proposition that was voted for by the committee eventually, not unanimously. There will be proposed to you by the Majority Leader of this Convention a proposition to amend this, which in my opinion is much, much better than this proposal, which takes it out of the Legislature. I am not going to digress further than that because I am going to let him expatiate on the amendment that he will propose.

But I say to you now that after full and due consideration that the proposition which is contained in his amendment is, in my opinion, much better than the proposition which was voted out of our committee, and for which I voted in the committee because I couldn't get the other one through.

I hope, Mr. Rose, that I am acting in accordance with the same procedure that Senator Greenberg did when he agreed that some of the proposals voted out by his committee could be improved upon. Now, so much for that.

Section 6 is substantially the same as the previous section on redistricting and will have substantially the same amendment that deals with Congress as distinguished from the State Senate and the State Assembly; and by reason of certain complexities in the federal statutes, we have to have a different section to cover that. At least we thought we found we could not combine it in one section and thus simplify it, so you will find two separate sections—one that deals with the Senate and with the Assembly and the other that deals with redistricting and reapportionment of Congress. Both are substantially the same, though, in thought, intent and purpose.

Section 7 is a new section, insofar as it provides for a pre-legislative organization session. You all know that the present Constitution provides for the Legislature to meet in January after the year in which they are elected. The Committee thought that it would be a very good step forward and a progressive step for it to take to provide that the Legislature, when it convened in January, should immediately get down to the business for which it was elected by the people; to wit, to legislate in their behalf and that their organization should take place prior thereto. And so this provision provides that the legislators-elect shall meet in December and shall do their organizing. In other words, the Assembly shall elect their Speaker, the Speaker shall designate the Majority Leader of the Assembly, the chairmen of the committees shall be picked, the committees shall be appointed; and the same will apply in the Senate.

Fear has been expressed to me by some members that that section may be

read as meaning that the Legislature shall meet jointly in December. It has no such connotation. It was not so intended. And if anybody reads it that way, you may be assured that the Committee on Style and Arrangement, if you are in favor of the basic proposal, will correct it. This intends separate sections of the legislators-elect—those of the Assembly by themselves and those of the Senate by themselves—solely for the purpose of organizing in the month of December.

Now let's get down to that old girl that Al Smith used to call "Lulu," Section 8. Section 8 has been redrawn and the provision for across-the-board expenses, which originally was called "in lieu of expenses," and which Al Smith renamed or nicknamed "LuLu" and which got this odium and odious connotation has been eliminated by this committee. So that if you vote this section into being and it is approved by the people, Lulu, insofar as expenses are concerned, is dead. We have substituted a provision which reads: "That there shall be reimbursement for necessary expenses to be fixed by law." No across-the-board expenses.

If a man comes from Erie County, he is entitled to be paid for living here while he is attending the sessions of the Legislature. If he has a room at the DeWitt or Ten Eyck or a motel room, he should be reimbursed for that. That is a necessary expense. If he lives in Albany or Schenectady or Troy and does not need a hotel room, that is not a necessary expense; and so we provide here for necessary expenses, expenses which are necessary. That does not mean—nobody came to me and said, "Well, suppose he takes over the whole Ten Eyck or the whole DeWitt?"

Well, that is not a necessary expense. It may be an actually incurred expense, but it is not a necessary expense, and so the legislators, by this provision, are limited to necessary expenses.

The other provisions which deal with allowances to the legislators for extra expenses above and beyond what I call the call of duty have not been touched and have been rearranged to simplify the language. In other words, if the Chairman of the Committee on Codes receives an allowance because of the extra work that he has to do, or the Speaker of the Assembly or the President Pro Tem of the Senate, those are for additional work, for special work, and those allowances have not been touched and should not be touched. There is a vast difference in my opinion between an Assemblyman who serves on a committee who can come to the committee meeting and then go home and a man who has to spend all week and all month and maybe all year as chairman of a committee traveling from place to place or as a Speaker or who is the President Pro Tem or some other responsible capacity and has to do this type of work. If we want to get the right kind of legislators to do the right kind of job, we should be prepared to pay them what they are worth, but we should not pay them "Lulus" across-the-board which have no actual relationship to expenses incurred. That is Section 8, ladies and gentlemen.

Section 9 is a change. Under the present provisions of the constitution in order to serve in the legislature as a member of the Senate or the Assembly, you have to be an eligible voter, and the Committee thought that by reason of the fact that the legislature was given the power to reduce the voting age all the way down to eighteen, either eighteen, nineteen or twenty, that there ought to be some provision in the constitution of eligibility so far as age was concerned to serve in the legislature.

I call your attention to the fact that in the House of Representatives, even though at twenty-one you can vote for a Congressman, you have to be twenty-five years of age to serve as a Congressman. In the Senate, you have to be thirty years of age. To be President of the United States you have to be thirty-five years of age.

So the Committee incorporated a provision that no person shall serve as a

member of the legislature unless he is at least twenty-one years of age. That is the first change.

Now the second change is that he has been for the five years preceding his election a resident of the State. The "five" was put in there to conform that with the gubernatorial requirements—a man has to be in the State for five years before he can run for Governor.

Personally, I see no magic in the "five". I see no magic in "four". I see no magic in "three" that has been proposed by Mr. Levy, which will be an amendment here, but I certainly think the "five" voted by the Committee is too onerous and too restrictive. If the politicians want to protect themselves from being voted out of office, they won't have to wait, but newcomers coming in can take their job away from them.

The other proposition is that the man must be a resident of the district for the twelve months preceding the election, unless his district has been altered by redistricting. We thought it was unfair if a man was redistricted out of his district to say he couldn't run. With that lone exception, he must have been a resident for the preceding twelve months to run for the legislature in that district.

There's been no change in Section 10. It is the old Section 9 unchanged.

Section 11 in effect says this, that the transcript of debates in both houses of the legislature, that the debates in both houses of the legislature, shall be transcribed and be available to any member of the public. It seems passing strange to me that in the latter part of the twentieth century, 1967, if I wanted to find out what my Assemblyman has said I can't get a copy of it, I have to go to him with hat in hand and get his permission to have it transcribed to find out what he said and why he said it.

These men are public servants, and I think that they recognize that they are and don't want any provision which prevents the public at large from finding out what they said in support of or against a particular proposition, and so we put in a constitutional mandate that the public debates be transcribed and shall be available to any member of the public.

That doesn't mean that two hundred thousand or four hundred thousand people can come from Queens or Kings County and say, "Give us a copy of the speech." It simply means that they shall be transcribed and be available, and if they want to look at them they can, and if they want to have them copied, they can have them copied at their own expense, just as the Congressional Record, it shall be available to them.

I want to offer an amendment, Mr. President, in connection with Section 11 if I may, because the language there is somewhat garbled, and so the amendment reads as follows—the meaning is exactly the same but in transcription it got mixed up: "Each House of the Legislature shall keep a journal of its proceedings and a transcript of its debates, except for such parts as may require secrecy, the journal shall be published and the transcript shall be available to the public."

I ask that it be handed up as an amendment and it be considered in place of the Section 11 now contained in the proposed article on the legislature. It is only the first sentence that is changed. The rest is the same.

Section 12, which is old Section 11 remains unchanged.

Section 13, which is old Section 12 remains unchanged.

Section 14 has one substantive change. I will ask you to go to page 8 of my analysis.

Now, under the Constitution a bill must be on the desks of every member for three days before it can be considered, even on first passage. I am told by the legislative experts that that cost a great deal of money and that as a practical matter it is of no avail. For instance, if it is Bill 1365 put out on the members' desks or under the members' desks, and if they want to find out what 1365 is, he would have to work through a whole lot of bills that are not kept in numerical

order, whereas the clerk does keep them in numerical order. If he wants 1365 he says to the clerk, "Give me 1365." We put in a proposition that instead of being on the desks of every member, it will be filed with the clerk, but before final passage the bill must be on the desks of every member for three days. That is the only substantive change there.

In Section 15 which appears on page 9, the words "special bill" appears instead of the words "local bill" and that change has been made because the Committee on Local Government uses the terminology "special bill" instead of "local bill", and simply to make it conform throughout the Constitution the meaning of the words is exactly the same.

Section 16 has no change in it with one exception. At the end of 16 which deals with the auditing of claims against the State and their allowance by the Legislature, private claims, there was a constitutional statute of limitations. As you can readily see, the words "statute of limitations" means just what it says, statute, it doesn't belong in the Constitution. It is the same as every other statute of limitations which is fixed by the Legislature, and so the committee was of the opinion that that should not be frozen into the Constitution, but that the nature and duration and extent of the statute of limitations in this regard should be fixed by the Legislature. That is the only change there.

Section 17 deals with incorporation by reference, and for those of you who may not be familiar with it, although I assume all of you are, the Constitution now contains a provision that you can't incorporate one bill into another bill that you propose by reference.

Here is what happened in that connection. When the State of New York decided to give the City of New York income tax powers, they found it was necessary to print in the State of New York bill the entire Federal tax code, you couldn't refer to it by saying "Internal Revenue Code, Section 44, Article so-and-so," you had to print the entire revenue code, at the cost of many, many thousands of dollars.

We tried to delete the incorporation by reference provision, at least I did and some of the members of the committee did, from the Constitution. After full and free and fair debate we were beaten and the present provision now in there is the result of the deliberations of the committee with the many, many express exceptions now therein contained for tax bills and the like. It is awkward in phraseology. It doesn't make sense. Personally I would like to see the entire section eliminated, but if it isn't, Neal McCurn is going to propose a proposition changing the phraseology, carrying out the intent and purpose of Section 17, but changing the phraseology which I think is in conformity with what everybody on the committee wanted, if this provision is to be retained in the Constitution.

If you go to page 12, one of the omitted sections is Section 8, which now provides that the legislators are elected in November unless the Legislature chooses some other date. Of course if the Legislature can choose some other date there is no use in putting in November. We thought that was statutory in nature and omitted it.

I think the rest speaks for itself, and I will be glad to answer any questions as we go along upon any of the proposed changes to the best of my ability.

Now I don't expect you to agree with everything that we have done. I don't think any member of the Committee agrees with everything that has been done. As I indicated to you, I don't agree with everything that the Committee has done, but I do want to give the entire membership of my Committee a vote of thanks for the time that they spent and the energy they have used in coming up with this Article on the Legislature.

I think that along with such amendments as will be made, it will be a gigantic step forward and will be an Article on the Legislature which many of the constitutions of the other states can copy and emulate.

Thank you very much.

MR. WEINSTEIN: Mr. President.

THE PRESIDENT: The Chair recognizes Mr. Weinstein.

MR. WEINSTEIN: Mr. President, before I make the offer, I want to express my appreciation to Judge Shapiro as Chairman of the Legislative Committee, and his Committee, made up of both parties, for the very fine explanation and presentation this afternoon, and I think it is a wonderful sign which will show the public at large that we have been working these past few months—

THE PRESIDENT: May I interrupt you just for a minute, Mr. Weinstein? Before you make the offer that you intend to make, I was wondering if I could ask you to waive the time for a moment to give Mr. Carroll, the Vice-Chairman, a chance to make a general statement as did Mr. Shapiro?

MR. WEINSTEIN: I am sorry, I should have thought of it, too. Thank you.

THE PRESIDENT: The Chair recognizes Mr. Carroll.

MR. CARROLL: Thank you. I want to join with Judge Shapiro in commending the members of our Committee on the dedication that they gave to this task. There were differences of opinion, but every one was attempted to be ironed out by discussion, by reason and by logic. I found Judge Shapiro very cooperative in discussing everything that we had before us with me, and while he didn't always agree with my ideas or I with him, at least we had a full discussion and whatever was reached was reached not because of partisanship, not because of anything but a sincere desire to hand to this Convention an Article on the Legislature that would be worthy of your consideration, worthy of inclusion in the Constitution and protective of all the rights of the public and voters of the State of New York.

I disagree with very little that Judge Shapiro has said. I do want to address myself just briefly to one section of the Article, and that is the section on reapportionment. As Judge Shapiro has said, his model constitution contained a provision for reapportionment by a commission. We felt—I felt that this was a job which is to be entrusted first to the Legislature. After all, of all the people in the State of New York what group is more responsive to the public? Election after election they lay their record on the line. Their record is surveyed by the newspapers and other media of communication, is attacked by their opponents, is defended by them, and is well known, and each act they do down here is subject to review and their office is at stake if they do not respond to the needs of the people and the welfare of the State.

I felt also that there is a gradual trend toward taking away from the elective offices that which we elect them for. I sat here for nearly a week and heard how sacred the right of vote was, how it was the most glorious thing we had in America and in this State, and yet as I sat here and watched the people speak who spoke in that vein, I saw many who wanted to take away the right of the people to elect judges and have them selected; I saw some who wanted to eliminate the election of the Attorney General; I saw others who thought the election of the Comptroller was wrong; and finally I found many who wanted to take away from the Legislature, which is an elective group, the right of reapportionment.

Now the right to vote is a great thing if we leave it as it is, but if it is whittled away by the very people who proclaim it is great, by the time we get around to handing it back to the voters or even to the new class of voters, which this same group advocate, the younger set, we may find we are giving something as useful as a bikini at the north pole. Let the elected officers of our State do their job; guarantee the job will be done by certain safeguards which we have put into the section as it has been drawn.

Although we had several commission proposals before us, and I understand

there will be several today, we thought that the job should be given to the place it should go, to the legislators first, give them a chance for a year to reapportion—people will say they had their chance in the past and they missed, but remember in the past we dropped them blindfolded and handcuffed into the labyrinths of something new and said “Get out of that if you can.” This time we have provided in Section 5 certain guide rules which I think my committee is almost unanimous in accord as being proper guide rules for apportionment and I say with this guide to help them and with the Court of Appeals back of them to guarantee that these guide lines are properly applied, that the Legislature can and will do its job and let’s leave it to the Legislature. If they fail, then for a short period of sixty days the Commission will have its opportunity to reapportion and from there the pathway leads to the Court of Appeals, the one agency in the State which no one can attack.

After this plan had been discussed by the Committee, those who had advocated the power of veto by the Governor over any action by the Legislature pressed even harder in their contention that this is the most important law that the State of New York will have before the Legislature. That this safeguarding of public welfare provides that the one person who represents all the people in the State of New York, to wit, the Governor, shall have the right to veto in considering other laws; certainly that this should be done by statute and the Governor should have the same right of veto over this legislation as he does over others.

This proposal will be advanced as an amendment today. I understand it is this proposal which the majority on our committee feel it is drawing away from the proposal as set forth in Section 4. Yet we feel, not on the ground of partisanship, because Legislature can be one party and the Governor another over the years to come. It will not affect the present Governor or the present Legislature, that in the history and in the tradition of the State and in the welfare of sound government a review of this apportionment by the Legislature and by the Governor is a necessary thing. We urge very strongly that no commission be given the powers which should be vested in our Legislature, and we will urge throughout the day today that this prime responsibility for reapportionment be placed by the Legislature.

On the other things, such as term of office, I know they are going to be debated here fully and decided fairly by the majority, and at this time I take no stand, and although I may ask to be heard later on these questions I will say nothing now.

With this preliminary and with thanks again to Judge Shapiro and the majority members of the Committee for their cooperation in preparing this Article, I conclude my introductory remarks.

THE PRESIDENT: The Chair recognizes Mr. Weinstein.

MR. WEINSTEIN: Mr. President, I have a very unusual distinction today. It is the most unusual one, because it never happened to me in nine years as a legislator or in my term as a Constitutional Convention delegate. The arguments presented against the amendment I am about to introduce now.

To begin with, I offer the following amendment, waive its reading and ask consent to make a brief statement.

MR. BRYDGES: No objection.

MR. WEINSTEIN: I occupy perhaps, a very unusual position in this Convention. I am a member of the Legislature, I am a member of the Constitutional Convention and, I am also very proud to say, a political leader back home in Queens County. As such, you would understand that there might be a conflict of emotions in what I am about to say. If some of you don’t know what a conflict of emotions is, it is a man who sees his mother-in-law going over the cliff in his brand new Cadillac. That is a conflict of emotions. My emotions perhaps

would be in conflict if I hadn't experienced a most unusual sensation during my term of office as a legislator. I had the unusual distinction of being the secretary—a very dubious honor—of the Joint Legislative Commission on Reapportionment, which had that famous fiasco when a lame duck session met to determine the legislative reapportionment of this great Legislature of the State of New York, and I also have had the opportunity as a political leader to see what happens. I finally came to a very sad but nevertheless true conclusion. There must come a time in a man's life when he must fish or cut bait, and I am prepared to do that very thing now. In this amendment I suggest that we determine once and for all that reapportionment has become a rather sticky subject, and that reapportionment is not the province of every legislator to determine for himself how he can insure his being seated again, or maintaining his seat, but rather he keep his obligation to the people of the State of New York who have the right to determine who will grace the seat in the Legislature that we all so proudly have.

I have therefore suggested that no later than March 1 of each calendar year a redistricting commission shall be established, to consist of five members, one of whom shall be appointed by the Temporary President of the Senate, one by the Speaker of the Assembly, one by the Minority leader of the Senate, one by the Minority leader of the Assembly, and one by the Court of Appeals, and that one shall be the chairman.

I also suggest further that any vacancy on the Committee shall be filled in a like manner.

This Commission shall prepare a Senate and Assembly redistricting plan and certify such plan to us. Any such Senate and Assembly district plan when so certified shall be final, except that a citizen may bring a suit to the Court of Appeals, which shall have original and exclusive jurisdiction concerning the validity of such redistricting plan or any part thereof.

The Chairman, incidentally, of this Commission will have a full vote, and I believe once and for all we will take the issue of reapportionment out of the hands of many news media, many organizations who deery the fact that we are at the present time having great difficulty with the Legislature and its reapportionment.

The purpose of a Legislature as I see it is to represent the people of the State of New York. The purpose of the Legislature is to see to it that the present generation and future generations can live at peace with each other in a better state, in a better world, and with better opportunities for all the people concerned, and we can't, with all those tremendous tasks awaiting us, spend our time in haggling and fighting and scrapping and scrounging as to what lines or how compact or where they should be in an effort to determine who has the advantage.

You will note from this plan that every party has the same advantage, every political party, that there be no minority or majority, but a commission to determine what they will do that is for the best interest of the people.

Thank you, Mr. President.

Let me point out that no legislator may be a member of the Commission.

MRS. SCHEER: Mr. President, may I just intrude for a moment to ask you to be good enough to extend your very warm greetings to some special guests we have, the wife, Gloria, and three of the four sons of our Delegate, Leo Levy, seated right up in the balcony to your right.

THE PRESIDENT: The Chair is very pleased to welcome Mrs. Levy and the three boys of our esteemed Delegate, Leo Levy, to the deliberations of this Convention, and trust that they enjoy the same.

Senator Brydges:

MR. BRYDGES: Mr. President, I think that the signals have been changed

in the last hour or two and I wanted you to know, sir, that I didn't come here for the purpose of diluting either the purpose of the Legislature or the powers of the Governor. Now, this proposal by Mr. Weinstein comes at the eleventh hour, and under the ruling of yesterday I am going to ask you, sir, to defer consideration of this until tomorrow's session, but meanwhile I want to say just a couple of things.

First of all, sir, not too long ago you said in Syracuse, I believe it was, that this is going to be a Convention controlled by the democrats with a small "d". The "d" is getting bigger every day, it is a block "d", it is a "d" in Old English letters, there is complete domination of this House now by the majority party, and I have sat here, Mr. President, session after session, hoping that we all meant the things that we piously said about approaching this total product in a non-partisan matter and trying to develop a constitution that would reflect credit on all of us. That, Mr. President, can no longer be the case. We have witnessed time and again when on issues which are not partisan in their essential nature, your side of the aisle has demonstrated a strength, which we have been powerless against, and these are non-political issues. And now we come to this proposal advanced by the distinguished majority leader that would take away the power of your house, the power of the house that I have the honor of presiding over as Temporary President, take away the power of the Governor and give that power to whom? Somebody whom the people never elected to office, faceless people who make sweeping decisions and you can never find them from that day forward. We have had experience with so-called outside blue ribbon agencies. We had the Professors' Plan. I don't know what motivated them. I do know that the end result of their plan, if it had become effective at the whim of the Court of Appeals, would be to give the Assembly ninety-five seats Democrat out of one hundred and fifty in a State where there is almost an even balance politically. I don't know what motivated them, all I can judge by is the result it would have obtained. You will get the same result from another group of professors because they will all have their own personal ideas, unchecked by the vote of the people, their own ideas, their own philosophy about how these parties are to be apportioned. And, Mr. President, we are political, we are political in the Senate and the Assembly, but we know this State, we are responsible to the people for what we do. What are their votes? I cast out the devils by Beelzebub, by whom do their children cast them out? If I have political motives, why is it evil for me to have them, and if they have political motives, why is it virtuous for them to have them?

Now, Mr. President, I don't know what the men on this side of the aisle are going to do, the men and women on this side of the aisle, in reaction to this proposal. I just say, Mr. President, that it looks to me, it looks to me as though there were so much concern over a possible four-year term for the Senate and a two-year term for the Assembly, that this was involved in this determination to accept this proposal by your side, advanced today by Mr. Weinstein, and I am serving notice, Mr. President, that unless there is some resurgent evidence of non-partisanship, or bi-partisanship approach to this Convention, that I am afraid we are going to have to take the same hard, tough party line—and I hate to do it—that you and I have seen in the Senate and the Assembly, and I appeal to everybody in this room, let's quit playing politics, we have got a lot of issues here that don't affect our parties. Let's look at them in that light. I know what a party issue is, so does Mr. Weinstein, so does most everybody in this room. If we are going to play politics, let's play politics with them, but for goodness sake, let's keep some rapport as people, as delegates, on these issues, that don't affect the visceral issues of politics.

Mr. President, I ask now that the consideration of this amendment be deferred until tomorrow.

THE PRESIDENT: In view of the previous ruling of the Chair, this amendment will go over until tomorrow morning.

MR. SHAPIRO: Might I say a word, Mr. President?

THE PRESIDENT: Not in answer to Mr. Brydges. We will have time to discuss those matters tomorrow when this amendment is taken up. I might ask you, Senator Brydges, to also think about some of the statements you made because I would feel that there is no such thing as a capital "D" as far as the author of this amendment is concerned. It indicates very clearly that they are operating with a small "d" on that one, so think about it.

The Chair recognizes Mr. McCurn.

MR. McCURN: Mr. President, I offer the following amendment, move its adoption, waive its reading and will explain said amendment.

THE PRESIDENT: I am sorry, Mr. McCurn, will you please hold up your amendment for a while?

I think Judge Shapiro has a clarifying amendment which ought to be introduced first.

MR. McCURN: Yes.

THE PRESIDENT: The Chair recognizes Mr. Shapiro.

MR. SHAPIRO: I handed that up. That deals merely with the clarification of the phraseology dealing with the public debates. As I explained to the ladies and gentlemen of the Convention before, there is no change of substance; it makes it mandatory for the Legislature to have the transcript available for inspection by any member of the public and make it available to them.

THE PRESIDENT: Is there any discussion on the amendment proposed by Judge Shapiro?

MR. BRYDGES: No objection.

MR. JONES: Mr. President.

THE PRESIDENT: Mr. Jones.

MR. JONES: Mr. President, is it appropriate to put some questions to Judge Shapiro on his amendment at this point?

THE PRESIDENT: Judge Shapiro, would you yield to Judge Jones?

MR. SHAPIRO: Any time.

MR. JONES: Thank you, sir. I call your attention to your Section 6 in which you say that the standards, and I quote, "set forth in Section 5 of this article shall govern to the extent that such standards are not inconsistent with standards established by the United States."

MR. SHAPIRO: May I say to you that the question of the President dealt with an entirely different subdivision. I will come to that later.

MR. JONES: All right, then I will wait on that.

THE PRESIDENT: Is there anyone who wishes to discuss Judge Shapiro's proposed amendment?

The question occurs upon the adoption of the amendment.  
Oh, I'm sorry, Mr. Mangano.

MR. MANGANO: On the amendment.

THE PRESIDENT: On the amendment. Mr. Mangano.

MR. MANGANO: I would like to ask a question of Judge Shapiro.  
Judge Shapiro, in reference to the amendment that you propose at this time

regarding the transcribing and keeping of minutes of the debates in the Assembly—

MR. SHAPIRO: And the Senate.

MR. MANGANO: Well, the Senate already provides for that, but is that more or less basic on the proposition that I presented to this Convention?

MR. SHAPIRO: Yes, Mr. Mangano, you are entitled to full credit. This is a re-draft, in substance, of the proposition that you submitted.

MR. MANGANO: Judge, I want to thank you for your consideration in that you have given me a little part of your constitution.

MR. SHAPIRO: Not my constitution, the State's constitution.

MR. BRYDGES: May the ruling on applause be waived for a moment?

THE PRESIDENT: Yes.  
(Applause)

THE PRESIDENT: The question occurs upon the adoption of the amendment. All in favor indicate by saying "aye"; noes, "nay". The amendment is adopted.

Now the Chair recognizes Mr. McCurn.

MR. McCURN: Mr. President, I have two amendments to offer and I will take the least controversial first and I will get into the other after that. I offer the following amendment, move its adoption, waive its reading and will explain said amendment.

The first amendment, Mr. President, concerns Section 17 of the proposed legislative article, and what it does, in effect, is eliminate paragraph B and substitute another paragraph in its place instead, which amended paragraph sets forth in substance what was in the original proposition but in much simpler and more clearly defined language.

What we had intended to do, Mr. President and Fellow Delegates, is to make a motion to strike the whole paragraph, but I am not fatalistic and I realize now that probably we can't get that through, so that in lieu of that I have offered the second amendment which would boil down the language contained in Section 17 to prohibit incorporation by reference except in reference to tax laws of the United States, and I offer this amendment and urge its adoption.

THE PRESIDENT: The Chair recognizes Senator Greenberg.

MR. GREENBERG: Mr. President, will the delegate read the language of his amendment? I don't follow him at all.

THE PRESIDENT: Would you, Mr. McCurn?

MR. McCURN: Senator, it is on page 7 of the proposed Constitution, and this is Section 17 contained on pages 6 and 7. We would eliminate paragraph B starting at line No. 18 on page 6 and we would substitute in its place instead the following language: "Notwithstanding the foregoing—" you are looking at the committee report, Senator. I am looking at the bill, the proposal. On page 6, paragraph B, under Section 17, we would eliminate that and substitute in its place instead the following language: "Notwithstanding the foregoing, the Legislature in any law imposing or authorizing a tax, may incorporate by reference any provision of a tax law of the United States as the same may be or become applicable and may prescribe exceptions or modifications to any such provision."

In addition, Senator, we have added another paragraph to the designated paragraph, "C", which would state, "This section shall not apply to any bill or the amendments to any bill which generally revises, consolidates or complies a

statute or statutes." Now, this in effect says the same thing as was set out previously in the proposal but boils it down into what we feel is more readable language and also boils it down from 173 words down to 60, in line with our goal for a simplified Constitution.

MR. SHAPIRO: Mr. President.

THE PRESIDENT: The Chair recognizes Judge Shapiro.

MR. SHAPIRO: In line with the ecumenical spirit of the times, I am authorized by the leaders on the other side to say that at least in this case they agree, there is no partisanship involved, they go along with the amendment and we go along with the amendment.

MR. CARROLL: I agree with Judge Shapiro this simplifies the language, this says the same thing and we have no objection.

MR. GREENBERG: Mr. President.

THE PRESIDENT: The Chair recognizes Senator Greenberg.

MR. GREENBERG: I have no objection to the language provided the sponsor of the amendment would state for the record that the exceptions to the rule against incorporation by reference, as stated in the printed bill before us, that the exceptions in his amendment are exactly the same as they are in the printed bill before us.

MR. McCURN: They are exactly the same thing, Senator. The language is a little different, but it is exactly the same thing.

THE PRESIDENT: Does anyone else wish to be heard on the amendment offered by Mr. McCurn?

MR. HOGAN: As I understood, last Wednesday the President issued a directive to the effect that no delegate would be permitted to offer an amendment until it had been presented and on the desk of the delegates. Now, I for one have never seen or heard of this amendment before. I am not opposed to it but it does seem to me that we should follow some orderly procedure.

THE PRESIDENT: Judge Hogan, may I please say to you, if you recall last week I did make such a statement and I told all the delegates that if they got them into my office and to Senator Brydges' office in time, we would prepare mimeographed copies of all of the proposed amendments and that we would see to it that it got into every member's box. I have a copy of the mimeographed form that we prepared and Mr. McCurn's two propositions are on that list. Now, if you didn't come for your mail, I am sorry, but I am sure everyone has received them. I asked Mr. Weinstein to put his over until tomorrow because that came up today for the first time.

Does any other delegate wish to be heard on Mr. McCurn's amendment?

(There was no response.)

THE PRESIDENT: The question occurs on the adoption of the amendment. All in favor indicate by saying aye; noes, nay. The amendment is adopted.

Mr. McCurn.

MR. McCURN: Mr. President, I offer the following amendment, move its adoption, waive its reading and will explain said amendment.

Now, this amendment, Mr. President and Fellow Delegates, amends Section 8 of the proposed article on the Legislature which is contained on page 4, line 9 and the proposal would amend this section to insert the words "actual and" after the words "for" and before the word "necessary." The intent and purpose of this amendment, Mr. President and Fellow Delegates, is to do what in my mind would

effectively eliminate the compensation in lieu of expenses, or the lulu. Now, I think I ought to perhaps give you a little history of this proposal. This proposal to eliminate compensation in lieu of expenses was put in by me some time ago and was considered by the committee of which I was the chairman, the Subcommittee on the Legislature, and it was my intent then and is now to provide in our Constitution for a situation which our Legislature has not seen fit to do, that is to eliminate lulus, and when we considered this on the subcommittee level, the idea in principle was approved, and the language providing for reimbursement for legislators for their actual and necessary expenses was passed by our subcommittee. Thereafter the committee as a whole considered it and I was under the impression that we had passed that, too. Now, this was last Monday, I think. Subsequently and on either Tuesday or Wednesday a motion was made in our Committee on the Legislature to strike from that paragraph the words "actual and" and to leave it "reimbursement for necessary expenses." I, for one, was unable to determine why the impetus was to eliminate those words, and to be perfectly frank, Mr. President and Fellow Delegates, I thought perhaps the word had come down from the leaders of this Convention to strike it out, and I was glad to find out this morning, at least from our side of the aisle, that you, Mr. President, do not yourself oppose the words "actual and" in there and that it was not a word from the leadership.

Therefore, I can draw just one conclusion: That the reason for eliminating those words was done by argument, let's call it, persuasive argument by those fellow members or fellow delegates of our Convention who are members of the Legislature.

Now, I disagree with Judge Shapiro, respectfully, when he says under this proposal and under this language that we have that "Lulu" is dead. "Lulu" is not dead. The language that is contained in this proposal without the amendment calls for reimbursement to legislators for their necessary expenses, and I had it explained to me that the reason we want the words "actual and" out of there is so that legislators would not have to account for what they spent. I assume that under the words of this present proposal the future legislators could determine that necessary expenses for themselves ought to be \$30, \$40, or \$50 a day or what have you and they argue that this would be a lot more convenient and a lot easier if we were going to do that, and this is going to happen in the future legislatures where you have no different situation than you have presently. The "Lulu" which the Legislature voted itself of \$3,000 and which, incidentally, they in their good judgment decided this body should not have—I think we should return the favor to them, ladies and gentlemen, if in their good judgment they decided that we should not have it here, and I think we ought to do the same thing; and the only way you are going to effectively eliminate this is to provide that they be reimbursed for their actual expenses. I have no quarrel with that. In fact, I advocate the position that legislators should receive their expenses, but I do not think it should be left up to them to determine what is necessary and what is not.

I know that I have heard the argument that this is going to cost the State a lot of money and, in fact, one gentleman this morning said it would probably cost \$6,000 a legislator to enforce. Well, I strongly dispute that. There are 150,000 other State employees, I have learned from my check of statistics with Comptroller Leavitt's office, and they have informed me that it costs less than 65 cents a person to administer this. So if 150,000 persons on the State payroll, other than legislators, can get along on this particular type of operation, I do not see why you good gentlemen and ladies from the Legislature cannot do the same thing.

Therefore, I propose that we add those words "actual and" back in. Now, what in effect it will mean is this: That legislators from this time forward would have to file their expenses and a per diem the same way as any other employee of this State Government has to; and if it means that they have got to get a receipt

when they check in a hotel or check out and if it means they have to have a receipt for their lunch, I do not think it is too much to ask of them. I suspect that with all due respect to Mr. Brydges, insofar as I am concerned and a great deal of the other delegates to this Convention are concerned, this has not been so much a Convention with a "D" than it has been a Convention with an "L" and I think it is about time that some of us who are not legislators stood on our two feet and decided what is good for the State, and I hope that those of you delegates who feel as I do that legislators should be treated just like any other employee of State government, will vote for this amendment.

THE PRESIDENT: Does any delegate wish to be heard? The question occurs upon the adoption of the amendment as offered by Mr. McCurn. All in favor, indicate by saying "Aye." Those opposed, "Nay."

The amendment is adopted.

MR. BRYDGES: Mr. President, may we have a division of the house?

THE PRESIDENT: You may.

MR. SHAPIRO: Mr. President, may I say in fairness to the statement made by Mr. McCurn about leadership here—and I think it is due to both Senator Brydges and President Travia—that I did speak to both of them about this section and they said it was wholly immaterial to them whether the word "actual" was in or out, and they had nothing to do with taking it out. It was done at the Committee level and in my Committee.

THE PRESIDENT: Thank you very much, Judge Shapiro. Is there some question as to a division made to the Chair?

MR. BRYDGES: Yes.

THE PRESIDENT: The Chair asks that the Secretary call the roll.  
(Whereupon the Secretary called the roll.)

THE PRESIDENT: Will those who are opposed to the adoption of the amendment raise your hand. The Secretary will announce the results.

THE SECRETARY: Ayes, 136; noes, 42.

MR. LAWLESS: Mr. President, you missed the votes of Mr. Levy and Mr. Lawless.

THE PRESIDENT: Is there anyone whose name was not called as being opposed?

MR. LEVY: No. He called our names and we did not raise our hands.

THE PRESIDENT: Judge Lawless is in the affirmative.  
The amendment is adopted with the help of two decisions.

MR. LAWLESS: Mr. President.

THE PRESIDENT: Mr. Lawless.

MR. LAWLESS: Mr. President, so there is no mistake, I should be recorded on the positive side, not in the negative.

THE PRESIDENT: That has been corrected. The amendment is adopted. While you are on your feet, Mr. McCurn, the other proposed amendment on page 5 you are not going to offer, are you?

MR. McCURN: I am not going to offer that, Mr. President.

THE PRESIDENT: All right. Mr. Adams.

MR. ADAMS: Mr. President, I offer the following amendment, move its adoption, waive its reading and will explain said amendment. On the first page of the information which you have here, you note that in the first section—

THE PRESIDENT: Will you yield, Mr. Adams?

MR. ADAMS: Yes.

THE PRESIDENT: Mr. Shapiro.

MR. SHAPIRO: That proposition of yours, Mr. Adams, has been voted upon favorably by the committee and they are adding a sentence to it. It does not belong in the Article on the Legislature but goes in another part of the Constitution. I thought you ought to know that.

MR. ADAMS: Thank you, Judge Shapiro. May I comment briefly about that particular matter.

I understand that your Committee has voted favorably for the inclusion of a particular provision which would put in the latter part of the Constitution a general provision having to do with the fact that state government, in general, is not limited by the way it is mentioned in the Constitution. Mr. Brady gave me a copy of that.

I want to refer, specifically, however, to its location in the Article on the legislature because I believe that is important here that the Legislature have the reserved powers reserved to it by the Federal Constitution's Tenth Amendment, which specifically says that these powers not granted to the Federal Government are reserved to the people of the State.

We have had over the course of a hundred or more years a problem concerning public police power. We have no general welfare clause in the State Constitution and, therefore, the police power has been its alternate. Most of the states have had a similar problem and it is specifically the Legislature that I believe should represent the people of the State of New York during the 30-odd years between Constitutional Conventions. If these powers are reserved to the electors, how are we going to get it from the electors to the Legislature? I think also amendments such as you had proposed in some other article may well be apropos but certainly the Legislature represents the people.

I have in mind specifically legislation that has not been a constitutional provision and not authorized in the Constitution, that there has been serious question about it because the Legislature has not had the power to deal with certain items concerning matters of the health, welfare and safety of the people of this State, and we are simply adding by this proposal that the Legislature does have the power to legislate on these general things, particularly in the field of safety. We do have limitations. We have authority for the Legislature to act in connection with the welfare clauses and housing and some things like that, and they have been properly acted on under others. Where safety is connected with public health, there is a more serious question. I do feel that regardless of what we have in a later provision, there should be this general welfare clause in the Constitution delegating these reserved powers which are reserved to the electorate, the voters and the people, to the Legislature for 30 years.

MR. SHAPIRO: Mr. President.

THE PRESIDENT: Mr. Shapiro.

MR. SHAPIRO: Mr. President, may I ask that Mr. Adams' amendment go over until tomorrow. We have already voted upon his proposition with another phrase added to it and we will have it in final form tomorrow for submission. May I ask that the amendment go over to next week and be considered together with our proposal.

THE PRESIDENT: Will it be a separate proposition?

MR. SHAPIRO: It will be a separate proposition.

THE PRESIDENT: Have you any objection to that, Mr. Adams?

MR. ADAMS: No objection.

THE PRESIDENT: The amendment offered by Mr. Adams is withdrawn. Mr. Adams, may we withdraw this amendment and if you have a further amendment to make to the proposition next week, you can amend that at that time?

MR. ADAMS: Very good.

THE PRESIDENT: Then Mr. Adams, amendment is withdrawn. The Chair recognizes Mr. Levy.

MR. LEVY: Mr. President, I offer the following amendment, move its adoption, waive its reading and will explain said amendment. The amendment is on page 4 in the article on the Legislature, line 26, and it is a very brief change. It is just inserting "three" for "five," and I will make a very brief statement to go along with it.

We now have five years' residency in the State for the office of Governor, which I fully am in accord with because I believe someone running for the office of Governor should be a resident of this State for that length of time. But when it comes to the office of State Senate and Assembly, three years' residency is sufficient for the residents of an area to have their candidate reside in the State, and I would hope that all the delegates on both sides of the aisle will vote for this amendment. Thank you.

THE PRESIDENT: Does any delegate wish to be heard on Mr. Levy's amendment? The question occurs upon the adoption of the amendment offered by Mr. Levy. All in favor indicate by saying "aye." Noes, nay.

Do you want to try it again? I think the amendment is adopted, but suppose we ask for a show of hands so that everyone will be satisfied. The Secretary will call the roll and those opposed to the amendment will please raise their hands.

(The Secretary called the roll.)

MR. CARLINO: A slow roll call, Mr. President.

THE PRESIDENT: A slow roll call is asked for. The Secretary will call the roll.

(The Secretary called a slow roll call.)

THE SECRETARY: Mr. Bell.

MR. BELL: Mr. President, I request permission to explain my vote, please.

THE PRESIDENT: Without objection, Mr. Bell.

MR. BELL: In the future I may not have the opportunity to rise to support a Democratic sponsored proposition, but Mr. Levy's proposition I am in full accord with. In our committee's deliberations I had moved for a one-year requirement which was soundly defeated. I think it was only supported by another Democrat.

The basic difficulty I see with this proposition is that there is an equation made between living within a certain community and intelligence, and this is a wrong equation, and anything that flows from that equation is wrong. A man does not have to live within a community for a period of years in order to have the requisite intelligence to know what the problems of the community are, the goals of the community, and to be willing to get into the community and help solve these and help work and aid the community. By having residency requirements of this nature on the lower level, we are depriving the government of probably some of

the better minds in the community, of those who are able to contribute and make significant governmental achievements and goals.

We also tend to penalize people for moving from one community to another, and for these and a lot of other reasons I support Mr. Levy's proposition, his amendment, and ask that people on both sides of the aisle do this.

I withdraw my request and vote in the affirmative.

THE PRESIDENT: Mr. Bell in the affirmative.  
(The Secretary continued the slow roll call.)

MR. DENNEHY: Mr. President.

THE PRESIDENT: Mr. Dennehy.

MR. DENNEHY: Mr. President, I request that my name be called for the purpose of voting.

THE SECRETARY: Mr. Dennehy.

MR. DENNEHY: Yes.

MR. BERGAN: Mr. President.

THE PRESIDENT: Judge Bergan.

MR. BERGAN: I wish to record my vote in the affirmative.

MR. COVINGTON: Mr. President, record me in the negative, please.

MR. BRYDGES: Mr. President, may I have my name called?

THE SECRETARY: Mr. Brydges.

MR. BRYDGES: Aye.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes 86 noes, 80.

THE PRESIDENT: The amendment is adopted.

The Chair recognizes Mr. Hasper.

MR. HASPER: Mr. President, I offer the following amendment, move its adoption, waive its reading and ask permission to explain.

THE PRESIDENT: Mr. Hasper will explain his amendment. May we have a little order, please.

MR. HASPER: Mr. President, this amendment is an amendment to Section 7 on page 4, to strike out the last four lines of that Section and the word "except" on line 3.

Mr. Shapiro has mentioned this in his presentation and he said there may be some adjustment necessary and he understands what the intention was. However, it appears to me that the clause is so vague that we should not rely on what the committee's intention is, but we should do it in some manner that would make it a fair presentation of what Mr. Shapiro has in mind. But this is not the greatest objection that I have to the clause. It seems that a great many problems would arise if we left this in. The first and most imposing, I think, is that none of the legislators-elect would take office until January 1. Now, that is it at the beginning of the session. It says their legislative term starts on January 1. It is therefore a meeting of citizens who probably would become members of the Legislature but may not, and the Legislature, the Assembly and the Senate, might find itself in a position of having citizens who did not actually take office after

January 1, or of organizing the Legislature and of electing officials,—I do not think this is a good thing. I think it is fatally defective because he might not ever become a legislator because of death or resignation or removal, but in any event, this is a body of citizens, and not legislators, at the time the organization meeting is proposed.

Now, as to the vagueness of the clause. Would legislators-elect, met in joint session—it only calls them “legislators-elect”—what would they organize and to what office would they elect? There is no legislative organization or officers as such, only if each house is separately organized and elects. Would this be a legal proceeding, and I think that the bill should so state.

The first draft of the committee did not contain this clause at all. The second draft did.

Now, it may have been discussed, but I don't recall the committee discussing this. It suddenly appeared in the second draft.

It seems to me that the provision is unfortunate, the language is unfortunate, and I am therefore proposing to strike out all after the word “except” and all after that, and I hope that this amendment prevails.

MR. SHAPIRO: Mr. President.

THE PRESIDENT: Judge Shapiro.

MR. SHAPIRO: I think that this is a very salutary proposal. I think that the things that Mr. Hasper is afraid of are purely in the realm of make-believe. This is a constitution that we are drawing, and when the constitution says, “the legislators-elect shall meet in December,” they have constitutional status and therefore they have a right to meet and organize.

So far as you not knowing about the action of the committee, let me tell you that the action of the committee was unanimous on this proposition, at least it was unanimous so far as the members of the committee that were present at the time the matter was presented.

I understand your worries about the other situation, and I think the language could be improved to read “shall meet in separate session,” and I am sure the Committee on Style and Arrangement when it comes to pass upon this will take into consideration the fact that the explanation has been made by the Committee that it means not in joint session but in separate session.

I urge the defeat of the amendment.

THE PRESIDENT: The Chair recognizes Mr. Bartlett.

MR. BARTLETT: Would Judge Shapiro yield for a question?

MR. SHAPIRO: Yes.

MR. BARTLETT: Judge, do I understand that the thrust of this language is that the members of each house shall meet separately prior to the convening of the Session on January 1?

MR. SHAPIRO: You are quite correct.

MR. BARTLETT: To duly choose their leaders?

MR. SHAPIRO: Right.

MR. BARTLETT: That election shall be binding upon the two houses after they convene?

MR. SHAPIRO: Yes, sir.

MR. BARTLETT: This is before they assume office, Judge?

MR. SHAPIRO: This is legislators-elect, yes. The reason we put it in in that fashion, very frankly, Professor Bartlett, is so they won't get paid twice.

MR. BARTLETT: May I ask what would occur in the event of the death of a member-elect before the caucus and the convening of the house? Would that be binding on the legislature then?

MR. SHAPIRO: Of course. This is not a caucus, this is a constitutional provision providing for it.

MR. BARTLETT: So that the selection of the officers of the house will have been made with a vote of a member-elect who in fact never took office?

MR. SHAPIRO: That may be, he was a legislator-elect, elected by the people.

THE PRESIDENT: The Chair recognizes Mr. Rice.

MR. C. RICE: Would Judge Shapiro yield to a question?

MR. SHAPIRO: Of course.

MR. RICE: Judge Shapiro, what would happen if the legislators-elect were unable to agree?

MR. SHAPIRO: What would happen if they were unable to agree after January? We saw that. The Republicans would vote with the Democrats and put somebody in office, that's all.

MR. C. RICE: Mr. President, I might note that the entire Conservative delegation has caucused on this point. We have decided not to take a party position on this issue. But, Judge Shapiro, seriously, the intent of this is that it would merely give a two week grace period and it would not dislocate the actual convening of the Legislature if there were any sort of squabble.

MR. SHAPIRO: Of course not, it is just a progressive method of expediting the work of the Legislature.

MR. RICE: Thank you.

THE PRESIDENT: Senator Marchi.

MR. MARCHI: Would Judge Shapiro yield to a question?

JUDGE SHAPIRO: Yes.

MR. MARCHI: Every year I have been attending conferences, quite a different matter, but substantively having the same effect, to determine the officers of the respective houses, and I have been attending for ten or eleven years now, religiously. Now does this mean that the venal legislators that Mr. McCurn was talking about would be able to collect their actual and necessary expenditures for attending this session rather than putting the money out of their own pocket?

MR. SHAPIRO: I would say so, that would be a fair interpretation.

THE PRESIDENT: Is there any other delegate who wishes to be heard on Mr. Hasper's proposed amendment?

The question occurs upon the adoption of Mr. Hasper's amendment. All in favor indicate by saying ay; opposed nay.

I don't think we need a roll call on that one. The amendment is defeated.

The Chair recognizes Miss Gunning—I am sorry, Mr. Rice.

MR. C. E. RICE: Would Judge Shapiro yield to a question?

THE PRESIDENT: We have already defeated the amendment.

MR. C. E. RICE: This is not on this, this is on the general proposition, the legislative Article. If you wish I will defer this.

THE PRESIDENT: I already recognized Miss Gunning.

MR. C. E. RICE: I will wait.

THE PRESIDENT: Miss Gunning.

MISS GUNNING: Mr. President, I offer the following amendment, move its adoption, waive its reading, and will explain said amendment.

THE PRESIDENT: Miss Gunning.

MISS GUNNING: This amendment provides that on page one, line six, before the period shall be inserted: "But the people reserve to themselves the power to propose laws and to adopt and to reject them as provided in Section 19 of this Article."

Section 19, for those of you who received your mail this morning and have this, which Judge Hogan and I apparently did not, I will summarize briefly. It provides that 30 days before a session a bill may be submitted to the Legislature on the petition of three percent of the voters, equalling the vote for the last election in each county. It may be presented to the Legislature, placed on the calendar and voted on. If it is not passed, a new petition may be presented in the same way, and the Secretary of State shall submit it at the next election for the vote of the electorate. If such a bill is voted by the electorate, it may not be repealed or amended for two years. It shall be self executing, but the Legislature may provide procedures.

My purpose in presenting this amendment is because I am sure that all of the delegates here share the belief that this is a government of the people, by the people, and for the people. I am sure that they are all of the opinion that the State is the creature and the servant of the people, and not their master.

In this Constitution, we are assigning to the Legislature more power than we have ever done before, and when you consider Mr. Adams' suggested amendment, which Judge Shapiro tells us is under consideration in substance, we must keep in mind that when we present this Constitution to the people there is going to be some concern as to how much of their essential rights they are giving to the Legislature, remembering that for two years they will be unable to take any action, even to the point of electing another legislator who will be more amenable to their beliefs and their opinions.

We do indeed respect the Legislature and their integrity. However, it must be understood that a Constitution is a people's compact with the State in which they give up their individual rights and freedoms and in its very essence, as one of the witnesses told us at their public hearings, a Constitution is an expression of distrust of the Legislature.

Therefore, for any concern that may exist in the public mind, there should be some provision—as there are in other states—that will permit the people to initiate and present such a statute that will be effective within a reasonable length of time.

The provisions of this amendment will prohibit such a presentation for trivial purposes or by small groups of people. Three percent, even at this time, would represent approximately 180,000 people. It would be of statewide interest because every county in the State would have to vote upon it and submit their petitions.

All of us who have had experience with preparing petitions for nominations of candidates—and who in this room has not had such experience—knows that in order to be assured that the petitions will be successfully accepted you need twice as many usually. That means approximately 300,000, more than that, for this particular purpose.

So it would not be something that would be trivial or something that only a few people wished. It will not—as many people fear—interfere with the committee work of the Legislature. The valid work of the committees of the Legislature will continue as before. They will separate from among the bills that are pre-

sented those that they are confident have no general appeal or which are inappropriate. However, it would be naive for anyone in this room to suggest that there have not been occasions in our Legislature when there has been a broad demand for certain bills which were never able to get out of committee and on the floor. This will present a remedy for that kind of situation.

The minority group that may not be represented in this petition has no fear that they will have their rights interfered with. The Supreme Court demonstrated in the California case that where such a referendum destroys rights or interferes with the rights of any minority group it will be overruled by the Court.

I would suggest to you, ladies and gentlemen, that when we present this constitution to the people they will look for this kind of a protection before they will be willing to give up some of the very substantial rights which are now being passed to the Legislature.

I therefore urge you to adopt this amendment so that although it will be seldom used, but at least it will be some protection for the average group of citizens who may in a wide and large group throughout the state seek some sort of statutory enactment that would not be passed by the Legislature for some reason that we need not designate at this time.

I would point out that this is different from amending the constitution such as by initiation and referendum, because there will be situations which will arise, even if we put in an amendment to the constitution, which will refer not to constitutional matters but to statutes, and if the people find that their only way of redress is to go to the constitution by amendment, we will again find in the constitution statutory material which should not be there.

I would therefore ask that you give this your serious consideration and vote in the affirmative.

MR. SHAPIRO: Miss Gunning's proposal was not presented to our committee. It was presented first here on the floor.

MISS GUNNING: I am sorry, Judge Shapiro, I forgot to mention that this is the Genrich proposition.

MR. SHAPIRO: I was going to say there was some similar proposals presented to our committee and after very careful consideration they were unanimously rejected. This is an attempt to emasculate the Legislature. This is an attempt to provide for legislation by the citizen groups, instead of by the duly elected representatives of the people. There is more to this than meets the eye. This can very well be a pandering to a popular hysteria. We saw it in California and we should not enact anything which makes it necessary to go into the courts to sustain the constitutional rights of the people. I ask unanimous rejection of this proposal.

THE PRESIDENT: The Chair recognizes Mr. Seldin.

MR. SELDIN: Mr. President, some of the delegates here assembled may have read a report that Delegate Black and myself prepared on our trip to Nebraska. I might just tell you of what happened out there when we were there with regard to this matter of initiative in legislation. When we went out the Legislature of that State was really in turmoil. What had happened was that on the ballot was a proposition by the Legislature to abolish the present real estate tax system. Also on the ballot by initiative was another measure to abolish the present system of taxation as it related to real estate taxes and also to income taxes. There was also a measure to replace the real estate tax with new taxation for the State. All three measures were defeated and the State was left without any method of developing any revenue and the Legislature was coping with this problem when we were out there. I agree with Judge Shapiro, that this could create chaos in our State, this could create legislation by individual people and by large groups with large sums of money. I, too, urge defeat of this particular amendment.

THE PRESIDENT: The Chair recognizes Mr. Genrich.

MR. SHAPIRO: Mr. President, may I add just one more word; that this provision proposed by Miss Gunning also provides that if the petition is adopted by the people, the Legislature can't change it for two years. Following out what Mr. Seldin said, we might be without any tax source for two years.

THE PRESIDENT: The Chair recognizes Mr. Genrich.

MR. GENRICH: I rise in support of Miss Gunning's amendment. This amendment that has been mentioned is similar to my proposition No. 615. Now, it is not exactly correct that we would be without any means of taxation because this provision also provides that if the provisions of two or more proposed laws approved by the people at the same time are in conflict, the provisions of the measure receiving the largest number of affirmative votes at such election shall prevail to the extent of such conflict.

Now, the amendment would reserve to the people the power to govern themselves in the event that the Legislature failed to act. I believe that most of the delegates here are working toward a simplified Constitution containing basic principles. Such an instrument would result in a much wider discretion being given to the Legislature. The result of this would be that it would be no longer necessary to continuously submit to the voters many propositions as we have in the past. However, the Legislature, given greater power, could possibly abuse these powers. Therefore it is necessary to have some means to guard against the abuse of this power that they are being given. The people should be protected by this by reserving to themselves the right to initiate legislation. This amendment allows them this right with a great deal of protection. If the Legislature fails to act, then the question can be carried to the people. Unless we have such procedure, important popular demands can be frustrated for a long time. For example, the power given under the proposed suffrage provision recently passed by this House on the order of second reading has given the Legislature the power to lower the voting age. On this question the Legislature has in the past failed to act. That is, it has failed to even submit the question of voting age to the people by way of a constitutional amendment in spite of the efforts of many people to have them do this. With a bi-cameral Legislature with divided control of the two Houses, such as now exists and may continue to exist, nothing can be passed unless both parties agree. The fact that the people reserve the right for themselves would assure that the Legislature would not be able to disregard the will of the people. I therefore urge its adoption.

THE PRESIDENT: The Chair recognizes Judge Widlitz.

MR. WIDLITZ: Would Miss Gunning yield to a question?

MISS GUNNING: Yes.

MR. WIDLITZ: As I understand it, Miss Gunning, an interpretation of paragraph "C" in your proposal would permit any third party in this State who could by concentrated action garner 3% of the votes in each county, to present at will any legislation they desire to the electors of this State periodically. Is that correct?

MISS GUNNING: Well, I think if you have had experience, as I am sure you have had, going out and getting petitions, you can't very well get them again and again and again, as you indicate. This is a situation where the people would have a chance first to present it and the Legislature could act upon it. At that time during the debates the electorate would become informed as to why the Legislature was voting down the particular bill. Then going out a second time to get these petitions they would meet the resistance that an informed electorate would have after having heard the Legislators.

MR. WIDLITZ: Then your answer to my question is yes?

MISS GUNNING: Yes, sir.

THE PRESIDENT: The Chair recognizes Mr. Mastandrea.

MR. MASTANDREA: Mr. President and Ladies and Gentlemen: I rise to wholeheartedly support the amendment submitted by Miss Gunning since I, too, proposed in Proposition 1208 similarly the same type of proposition. What is wrong to give to the people the power to propose laws and adopt or reject the same? Since we are here to represent the people of the State of New York, what is so wrong if they find things not going too well with what the administration is handing down to them, if they have the initiative to go out and secure these petitions throughout the entire State? Certainly it shows that they have an interest in our form of government. The purpose of this greatly needed provision in our new Constitution is to give to the people reassurance that government in our modern society has not become so remote that it cannot effect a change if they believe their legislators have not represented their best interests. Legislators who introduce legislation which is popular will find it easier to get their bills out of committee, as most chairmen would not want to be embarrassed by having the people introduce legislation which they held up. Initiative will only be resorted to when the Legislature and the Governor do not represent the best interests of the people. Consequently, we will have more responsive legislators, which is essential to a well-ordered democratic society, and I strongly urge that both sides of the aisle get behind this and show the people that we can trust them, too, if they have the initiative to go out and make their own changes. Thank you.

THE PRESIDENT: The Chair recognizes Mr. Mankiewicz.

MR. MANKIEWICZ: Mr. President, on this matter I think we have the benefit of some historical experience. This is not a novel proposal. It has been in the Constitutions of many states, perhaps a dozen at one time or another. I would estimate that it has been in existence in various states for perhaps half a century. I think it is of some significance that during that half century, with the single exception of the Nebraska unicameral Legislature, which was enacted in 1934 by an initiative petition, not a single measure of genuine substantive importance has ever, to my knowledge, been written into law by the initiative procedure in the dozen states which have it. It seems to me a sound theory, one which we were all taught to respect in our high school civics classes but one which has been demonstrated experimentally simply does not produce enough of merit to warrant its existence. Now, I am ready to be corrected, and if any member supporting this proposal can tell me what substantial meritorious proposal was ever enacted in this fashion in the half century that it has been available to the voters of a dozen states, I would support it, but in the absence of such a proof, I would suggest that history suggests its defeat. Thank you, Mr. President.

THE PRESIDENT: Mr. Rice.

MR. C. E. RICE: I rise, Mr. President, merely to reaffirm briefly my wholehearted support of this proposition and to remind the delegates to this Convention that there is in this proposition or in this amendment the safeguard of a dual petition, which is a necessary and I believe effective break upon precipitous popular changes in legislation. This safeguard ought to be emphasized because of the fact that you have to go around twice and get a second petition, with all that that implies, leaves room and leaves an opportunity for the Legislature to provide for the eventuality that the proposed legislation will be adopted, so that we can envision that we would have through this provision the sort of problem that arose as Mr. Seldin described in Nebraska. With that and for that reason I firmly support this amendment and urge its adoption.

THE PRESIDENT: Does any other delegate wish to be heard on the amendment offered by Miss Gunning?

(There was no response.)

THE PRESIDENT: The question occurs on the adoption of the amendment. All in favor say aye—

MISS GUNNING: Mr. President, I ask for a slow roll call.

THE PRESIDENT: Are there 20 who will rise to support the request for a slow roll call?

(More than 20 delegates arose.)

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

MR. BRENNAN: Mr. President, may I cast my vote on that? Aye.

THE PRESIDENT: Mr. Brennan in the affirmative.

MR. BERRY: Mr. President, may I cast my vote?

THE PRESIDENT: Mr. Berry.

MR. BERRY: In the negative.

THE PRESIDENT: Mr. Berry in the negative.

MR. WEISSBERG: Mr. President, may I cast my vote?

THE PRESIDENT: Mr. Weissberg.

MR. WEISSBERG: In the negative, please.

THE PRESIDENT: Mr. Weissberg in the negative.

MR. SAND: Mr. President, may I cast my vote?

THE PRESIDENT: Mr. Sand.

MR. SAND: In the negative.

THE PRESIDENT: Mr. Sand in the negative.

MR. LEVITT: Mr. President?

THE PRESIDENT: Mr. Levitt.

MR. LEVITT: May I cast my vote? In the negative.

THE PRESIDENT: Mr. Levitt in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes 22, noes 144.

THE PRESIDENT: The amendment is defeated.

MR. MANGANO: Mr. President.

THE PRESIDENT: Mr. Mangano.

MR. MANGANO: A bit on the levity side. At this time I wish to welcome back two members of this Convention who unfortunately, because of illness, have been convalescing. Through the medium of the newspaper the other day the President of the United States announced that he found out a few days ago that Dave Dubinsky was more or less told and certified that he is in good health and to participate and come back to the activities of this Convention. In behalf of the members of this Convention, Mr. Dubinsky, we wish to welcome you back.

(Applause)