PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION

OFFICIAL REPORT

Some Important Action on Judiciary Report.

CONTINUED FROM WEDNESDAY'S PROCEEDINGS.

Mr. R. WALTON MOORE: May I interrupt my friend one minute?

Mr. HUNTON: Yes, sir.

Mr. R. WALTON MOORE: He certainly did not understand me to say that the electorate of Virginia has remained the same since the introduction of negro suffrage? You did not understand me to say that?

Mr. HUNTON: I understood you to argue that the electorate of Virginia to-day is not a degenerate electorate.

Mr. R. WALTON MOORE: I said that, barring the negro vote, I had as much confidence in the electorate of my section, Piedmont Virginia, to-day as any man who lived there before the war could have had in it. And I will further say this to the gentleman. When he comes to talk about the degeneracy and the deterioration of the white electorate of Virginia, we have taken a position on that question. We have promised the people of Virginia that all of the white vote is so desirable that it shall be protected and kept on the voting list.

Mr. HUNTON: I desire to say, in reply to my friend, that it is a matter of concession, and a matter that he must know as well as I or any member of this body, that the presence of the negro vote, while not in the majority in our section of the State, has tended to demoralize the electorate and the election methods of Virginia; and it was the desire to free the State from that incubus and to restore to the white people political independence, political freedom, and to bring them back to the standard which they, left alone, would never have deserted, that this Convention was called.

I assert that the horror of negro suffrage to the people of Virginia has brought shame upon the white people of Virginia; that it has demoralized them; that it has brought about political methods that are not high and right and fair methods that the people between 1850 and 1860 would have spewed out of their mouths, and that there are conditions existing to-day in the eighth district, with which I am as familiar as my friend from the county of Fairfax, which would not have been tolerated for five seconds in that era, when the flower and chivalry of our manhood was in its very zenith in this country.

Now, if the conditions were such as they were then, there is no method of election or selection of judges that would not have given to the people of Virginia a magnificent judiciary. Whether you elected them by the people or appointed them by the Governor or elected them by the Legislature, the methods would have been in accord with the sentiments of those people between those periods, and the result would have been magnificent and would have been satisfactory to all parties of the State.

Mr. WITHERS: May I interrupt the gentleman from Fauquier?

Mr. HUNTON: With pleasure, sir.

Mr. WITHERS: Prior to the settlement or final decision by the Convention itself of the question as to whether or not judges of the Supreme Court of Appeals shall be elected by the people, the Committee of the Whole will have disposed of the suffrage question. Now, with a purified electorate and a restoration of the old conditions by this Committee of the Whole will my friend from Fauquier vote for the election of the judges of the Supreme Court by the people?

Mr. HUNTON: I will answer my friend's question. God knows what the suffrage plan adopted by this Convention is going to be.

Mr. WITHERS: Ah, but if it meets with your approval will you vote for the election of judges by the people? That is the question.

Mr. HUNTON: I am going to answer my friend's question, but I will answer it in my own way.

Mr. R. WALTON MOORE: While my friend is on that point, may I just supplement it, so that he can answer it all at the same time?

Mr. HUNTON: Well, put on the supplement.

Mr. R. WALTON MOORE: The supplement is this: If that is your trouble, not knowing to what suffrage plan we will come, will you move to pass by this question until we determine how far we will restrict the electorate?

Mr. HUNTON: I never said that was my sole trouble, and my friend knows that I will not agree to anything of that sort. My friend argues that politics and public affairs and elections in Virginia, have not degenerated,I cannot acquiesce in that statement. That there is the same manhood in Virginia, that there is the like ability, which, if given free rein and freedom of thought and liberated from this negro incubus, will assert itself in the councils of the nation and will make Virginians proud of their representatives, I am her to assert; but I maintain that the whole freedom of thought of our State and our people is affected by this negro incubus that hangs over us.

"Ah," said my friend from Danville, "if such a suffrage bill as you desire shall pass, will you agree to the election of the judges by the people?" I reply that the idea that a suffrage bill such as I desire or as any other member desires, will pass this body is utter impossibility. As my friend from Fairfax (Mr. Moore) so well sa'd; "Government is the result of compromise and concession;" an din my judgment, when the suffrage bill goes out from this body, it will represent in full the views of no individual member of the body. I say, however, in further reply to my friend from Danville that whatever may be the result of the suffrage efforts of this Convention, it will take years for the people of Virginia to rise superior to the lessons of degradation that have been taught them, and that they have been brought to, because of the wretched condition that we have put into by the villainous fifteenth amendment to the Constitution of the United States.

I care not how satisfactory the suffrage measure may be, it cannot restore us until God Almighty in his wisdom helps us to throw aside that incubus and to return to the high and pure method of government and of elections that existed prior to the negro vote being inflicted upon the people of Virginia; and though you may purify by excluding every single negro, it would take years to recover from the effects of it upon the white people of Virginia of to-day.

So I say the argument of my friend as to an election by the people, and the quotation from Mr. Jefferson, are under as different conditions as are possible. Conditions have changed. A new element has entered into our politics.

My friend says that that violates no one of the principles of government, that the three departments, the executive, the legislative and the judicial, should be distinct. Yet he is here advocating a proposition, the appointment of the judges by the Governor, with the advice and approval of the General Assembly, which makes the judiciary as absolutely subservient to those two departments, and is as violative of the principles as the one reported by the Committee on the Judiciary.

Mr. R. WALTON MOORE: I said, if my friend will allow me, that then you would have two departments of the government participating in the elections of a third, instead of having the third department, as now, absolutely under the control of one.

Mr. HUNTON: Unquestionably; and yet we all know that so far as any veto power upon the appointment of the Governor, comes from the concurrence of the Senate, as we have had experience, or of the Senate and House as contemplated by the Pollard amendment, it is but a small protection, and that that power is rarely exercised unless there is something to shock the senses of the community in the appointment that has been made.

Mr. JAMES W. GORDON: May I ask the gentleman a question just there?

Mr. HUNTON: Certainly.

Mr. JAMES W. GORDON: Is not the reason why that power is so rarely exercised because the occasion for its exercise so rarely exists?

Mr. HUNTON: I would not say so. I think there are very much better appointments that could have been made than have been made, and yet it must be a pronounced and marked occasion in order to call into effect the veto power, that is of the Senate.

My friend has argued with great learning and ability his proposition that judges should be elected by the people, and yet he fails to follow out the logic of his own conclusions, because he has not yet been willing to say that he is in favor of electing the subordinate judges by the people.

If my friend is dwelling upon precedent, if my friend is relying upon Jefferson as his guide and his sole guide, if my friend is not bringing in modern conditions and the conditions in which we are to-day, to modify the views of those sages, then why not follow out the result of his position to its logical conclusion, and elect all officers and all judges by the people, as following that exemplar he has selected for himself? It does seem to me that it is the unwisest thing to argue from the abstract principles of those sages, for whom we all have such deference and respect, without putting into that argument that new factor which has come by the changed condition of affairs in Virginia and in the world at large by the number of years that have intervened. I say it must be considered in the present condition of affairs.

"Ah," my friend says, "why don't you tell us of other States?" It would be idle to go into a report so far as we would gather it from the conditions in other States, except to say, iin general terms, that in some of the States of the Union the election of judges by the people has operated well, while in others it has operated very badly. There are some States, we are told, where for months preceding an election it is impossible to get a case heard because the judge is electioneering. There are others where judges have been compelled to subscribe largely to campaign funds in order that they might go before the people with the endorsement of their organization. I say those matters are political, and it is repulsive to me to bring the judiciary into them.

I desire to contrast with those conditions the facts as they exist in Virginia, and to see what has been the result of the selection of judges of the Court of Appeals by the Legislature of Virginia, because, bear in mind, my friend follows it no farther, so far as his declaration goes upon this floor.

I am here to concede, gentlemen of the committee, that in the election of county judges, growing out of the system by which the member of the Legislature practically nominated his county judge, there have been abuses, and there has been complaiint. If county judges were retained, it would be a serious matter and one as to which I have not yet reached any conclusion. It is necessary to state how I should be in favor of electing the county judges, because, as I said, there has been abuse in that direction growing out of the viciousness of the system.

But when we come to the election of judges of the circuit courts and judges of the Court of Appeals by the Legislature, what have been the results? Now, bear in mind, gentlemen of the committee, that the salaries are small and that it is almost impossible for the judges of Virginia to live as their fellows have been accustomed to live, upon the salaries which they have received; and yet, in spite of thta, thank God, the judiciary of Virgiinia, upon its circuit bench and its appellate bench, has kept pure and high and free from contamination of attacks or criticisms to any greater extent than is natural and incident to human nature and to human weakness.

That is the result which has come to us from Legislative elections. We stand there upon known ground, and we know what it has accomplished.

I do not mean to assert here that the method of selection by a Democratic caucus of the Legislature is ideal. I do not mean to maiintain that that method is free from fault, but I do say that of the methods suggested to the committee, though they traversed the whole field of experiment, it holds the best promise of an impartial and an independent judiciary.

The results attest it. Why go to New York to get a method of electing judges, when it is the method that has been in vogue in the State of Virginiia since the war, and which has resulted satisfactorily to the people of Virginia and to the bar of the State, as has been testified to by every member of this body who has spoken upon that subject as to the circuit judges and as to the judges of the Court of Appeals? That is experience. That is fact.

Who among us has forgotten the earnest, heated, excited controversy to fill the last vacancy that occurred upon the Court of Appeals, and which makes that a complete bench to-day? Who does not remember the eanrest, vigorous fight that was made by the friends of the three gentlemen who were anxious to occupy that exalted and high position? And whatever may be the judgment of any individual as to the personal merits of those three gentlemen, the result of that Legislative caucus was the election to sit upon the Court of Appeals of a judge who had been upon the bench of the circuit of Virginia for years and had intrenched himself in the strong opinion of the bar as one of the best circuit judges, if not the very best, in the State; and one who, having been tried and found equal to every emergency, was most worthy and fit to wear that ermine.

Now, that is the fact. There is no theory about that. That is the experience as being more valuable than perienceas being more valuable than theory. I prefer the ills, if you choose so to regard them, of the present system to the ills that we know not of which may grow out of an election by the people or a nomination by the Governor.

Ah, my friends, I say not only are there different political conditions in Virginia to-day from those that existed in the years from 1850 to 1860, but there are different conditions in politics in the world, and different conditions that would have come to Virginia, measurably at least, independently of the colored vote. This is an age of commercialism. It is an age of so-called pol'tics. It is a strenuous age; and while I should not have had the least objection to the nomination of judges by the Governor as politics were in Virginia prior to the war, coming down to present conditions and to the State of affairs that exists in V'rginia to-day, I shrink from it with terror.

I ecognize the absolute consistency of gentlemen who prefer this proposition to an election by the Legislature in direct lines; but I cannot conceive how gentlemen so violent in their advocacy of an election of judges by the people should overstep the Legislature, the popular representative body of the people, and go to a more monarchical form of government, the appointment by the Governor. I care not how you appoint judges. The whole aim and object of myself individually and of the committee, in my judgment, has been to get the highest, purest and most independent judiciary that law could enable us to select.

There may be ills about the Legislative caucus, but it has this advantage over either of the proposed methods. Take a popular Convention to nominate officers, and it is done in the course of a few hours by delegates not selected with reference to the judgeship, but by delegates selected with reference to their preference for the Governorship. There i s not time for the people to bring to bear upon such a body their known wishes, their opinions, as to the fitness of the various candidates for the judicial officers, and in the twinkling of an eye, combined power may defeat a judge because of some unpopular decision without even the judge being aware that there is such a fight being made upon him.

Let us look for a moment at the appointment of judges by the Governor and see whether that is wise and whether it is free from objection. I deem it only less objectionable than the election by the people. I have undertaken to show something of the nature of politics of to-day, how they enter into every controversy concerndon) as to the manner in which ap- I would welcome the amendment of the gentleman from Richmond (Mr. Pollard) as to the method of electing pointments would be made were true ing every position. If the theory of my friend from Richmond (Mr. Gorjudges. If I believed that the candidate for Governor of this Commonwealth would be left free and untrammeled, to exercise their best and most patriotic judgment in the selection of the judge whom he would nominate I should hail the amendment with delight; but, as I have said, times change and we change with them. Suppose we exonerate the candidate from any willingness to make arrangements about this important office in the heat and stress of a gubernatorial campaign, I say it is a danger to which no man should be exposed, hard pressed as he may be. But suppose the friends of the candidate undertake to give pledges and promises that in consideration of certain support during the candidacy for the Governorship, they will guarantee, because of their influence and weight, that a candidate for Governor will appoint that man to the judgeship when he is elected, and then he is elected, I say there is danger from the present condition of political affairs that this high office of judge of the Court of Appeals will be dragged into political canvasses by the friends of the parties and bandied about shuttle-cock like, according to the necessities of the candidates.

Look at the last gubernatorial canvass, gentlemen of the committee. I acquit all of the candidates for that high office of any willingness to be a participator in anything savoring of a bargain connected with the nomination of a judge, but consider the strenuousness of that campaign, consider the eagerness and the earnestness with which the friends of those opposing candidates were struggling for the mastery of the Convention to be held at Norfolk, do you think it would be dangerous to give to that incoming Governor the power to nominate two judges of the Court of Appeals, soon after he was iinaugurated, on the first day of January, 1902? I acquit all those gentlemen of any willingness to barter or to trade or to combine in such a matter; let them be as free and as far from it as the driven snow, is there not a danger that their friends and followers would seek support for their candidates by offeriing inducements and promising influence and support for the one or the other candidate for the Court of Appeals?

Ah, my friends, there is the danger. When this amendment was first offered I had comparatively little objection to it; but when I consider it in the light of politics as it is to-day, I feel and believe that it is fraught with the utmost danger to the people of Virginia that their judiciary will be dragged into the mire of the politics of the State, and that it will tend to draw down the judge from the high station on which he is placed; that it will tend to make the office a reward for political preferment, for political support, and that it will tend to make it trafficed in, traded in, bartered about and bargained for. For those reasons, it seems to me, it would be extremely unwise.

More than that, gentlemen of the committee, it does seem to me that it is putting too much power in the hands of a single man. I do not believe that any man ought to be entrusted with so much power. As far as the Legislature is concerned the people can be heard. They have elected their representatives. Those representatives have to come back for a reelection. The Governor, as you know, is ineligible at the end of a term of four years. The local influences can be weilded and caused to be felt upon the members of the Legislature much more than uponthe Governor, to make the appointment. They are much more responsive to the general sentiment of the State than the single Governor of the State to whom, by this amendment, you would give this appointing power.

If the people of your county have their views they can go to their representative in the Legislature and can enforce their views much more certainly with that member than they can if the appointing power is put into the hands of a single man. I say it is too much power. It is taking power from the people. It is leading to temptation into politics and has a tendency to bring the judiciary of the State into politics.

Gentlemen of the committee, we have tried this other method; we have stood upon it, wherever it may have come from, since 1870 until now; and I defy a member of this committee to say that it has producad results other than eminently satisfactory, in almost every case in the election of the judges of the circuit court and of the Court of Appeals.

I appeal to this committee not to depart from that which has been fairly satisfactory and go into the field of experiment, an experiment which has never been tried in this State under the conditions existing to-day, and which has never been tried, as to an election by the people, except for the brief period between 1850 and 1860, when there was but one election of an appellate tribunal and then another election to fill a vacancy—a period not sufficient to have tested it. I ask you to stand by the method which has been tried and found satisfactory to ourselves without reference to where it comes from, without reference to the fact that it is only followed in South Carolina and in Rhode Island, but with reference to the fact that it has been tried and suits the conditions of our own people better than any other method, and is not a matter of experiment at the present time.

I trust that the pending amendment will be voted down. (Applause.)

The CHAIRMAN: The question is on agreeing to the amendment of the gentleman from Richmond (Mr. Pollard.)

The amendment was rejected.

Mr. POLLARD: I ask for a division.

Mr. R. WALTON MOORE: Mr. Chairman, in spite of the fact that there does not seem to be a very strong sentiment in favor of the amendment, I crave the indulgence of the committee a moment.

My friend from Fauquier has rested his opposition to this amendment when we come to analyze his argument, upon the consideration that practical politics may control the nomination of the judges of the court, if the nomination is made in the way designed by the amendment.

I ask him to consult his experience and tell me where we have had more practical politics in the General Assembly or in the Executive office. There cannot be but one answer to that question and I say it with the greatest respect and deference for the General Assembiy, of which, as I have said time and again, I have been a member heretofore. We are not legislating for to-day. We must project ourselves into the future; and there is at least a fair chance that in the future we will have a repitition in the General Assembly of what occurred early in the eighties, and I know my friend would deplore that.

He says another consideration is, that the Governor may bargain in respect to these high judgeships. I invite him to consult his experience again and point me to a single man who has been the Chief Executive of this Commonwealth who would have demeaned himself to make a bargain in advance in respect to a judicial appointment, or who would have been burdened with any promise to carry out after he was sworn into office.

From the time of Patrick Henry down to this present moment, I do not think he can point me to a single man who has occupied the Executive office who would deserve his suspicion. It is not likely that in the future any man will occupy the Executive office who will act so unfairly to the State, and in such manner as to insure his own political destruction.

I shall not detain the committee. If you are seeking to give the people a greater participation in their government, let them elect the judges. If you are unwilling to give them a greater participation in their government by allowing two of the branches of the government, which are chosen by the people, to participate in appointing those who belong to the third?

Mr. POLLARD: Mr. Chairman—

Mr. HUNTON: Mr. Chairman, I believe the vote on the amendment has been announced.

The CHAIRMAN: The decision has been announced.

Mr. POLLARD: I asked for a division on the question.

The CHAIRMAN: The Chair did not hear the gentleman's request.

Mr. POLLARD: Just as soon as the vote was announced I was on my feet and asked for a division.

Mr. R. WALTON MOORE: I did not know it had been announced.

Mr. POLLARD: I asked for a division. A few days ago my friend, the chairman of the committee, asked for unanimous consent to have the yeas and nays on the proposition that was before us at that time; and I now ask the unanimous consent of this body to order the yeas and nays on this proposition.

The CHAIRMAN: Is there objection?

Mr. QUARLES: I feel constrained to object. I do not think the yeas and nays ought to be called in Committee of the Whole.

The CHAIRMAN: The Chair had announced the decision, and he did not hear any request for a division at the proper time.

Mr. R. WALTON MOORE: I did not know the Chair had made the announcement, or I would not have said anything. I think it is agreed that the amendment was premature.

Mr. POLLARD: I ask unanimous consent, then, that a division be had on the question.

The CHAIRMAN: The gentleman can reach his object by moving a reconsideration of the vote by which the amendment was rejected, and if that is decided in the affirmative, he can then have another vote.

Mr. WALKER: If it is too late to ask for a division, I move a reconsideration of the vote by which the amendment was rejected.

The CHAIRMAN: The gentleman from Westmoreland moves a reconsideration of the vote by which the amendment of the gentleman from Richmond was rejected.

Mr. POLLARD: On that I call for a division.

The motion to reconsider was agreed to, there being on a division ayes 38, noes 29.

The CHAIRMAN: The question now recurs on agreeing to the amendment of the gentleman from Richmond (Mr. Pollard).

The question was put, and it was declared that the noes seemed to have it.

Mr. POLLARD: I call for a division.

The CHAIRMAN: A division is called for.

Mr. GLASS: The gentleman from Richmond, was on his feet to say something, as I understood, when the vote was taken.

The CHAIRMAN: He was on his feet to ask for a division, as the chair understood him.

Mr. HUNTON: If the gentleman from Richmond desires to be heard upon his amendment, I ask that he may be neard. It is his own amendment.

The CHAIRMAN: Certainly; he has a right to be heard.

Mr. POLLARD: Mr. Chairman, what remarks I had to submit on this subject were submitted on last Friday. I simply rose to call the attention of this body to the fact that under the amendment as offered by myself, no Governor shall have the appointment of more than two judges of the Supreme Court, and under the amendment no Governor shall have the appointment of a member of that bench until he has been in office for three years. So the objection made by the gentleman from Fauquier to the appointment by the Governor would not be borne out, because the Governor would not appoint the judges until he had been in office for three years.

I simply wanted to call the attention of the committee to those two provisions of the amendment. Now, Mr. Chairman, I ask for a division on agreeing to the amendment.

Mr. GLASS: Mr. Chairman, before the vote is taken I want to say one word.

I desire to say to my friend, the chairman of the Judiciary Committee, that it seems to me he is running the risk of losing a great principle in this matter by insisting upon the exact method reported by his committee, and that this Committee of the Whole is about to defeat the best method yet devised for selecting judges of the Court of Appeals by the contest between two conflicting bad methods.

I have voted with the Committee on the Judiciary upon every proposition presented by the committee. I am utterly opposed to electing judges by the people, and I am quite as much opposed to their selection by the General Assembly.

Talk about practical politics! Was my friend from Fauquier ever a member of the General Assembly of Virginia?

Mr. HUNTON: Once only.

Mr. GLASS: Then he should know that he is proposing to put the election of the Supreme Court juuges upon a bargain-counter. (Applause.) That particular bargain-counter is better than the selection of judges by the manipulations of party conventions, because that is another bargain-counter of a different sort and a worse description. (Applause.) The plan advocated by the gentleman from Richmond in his amendment is an ideal plan, and I warn your committee that the contest is coming between that plan and the plan of selection by party conventions. You must make your choice between these two methods.

It makes a man despair of the Commonwealth to come to the General Assembly and see how elections are conducted. Here, within the last three or four days there has been a spectacle of bargaining for votes in blocks of five, ten and twenty, for consideration. I do not, of course, mean monetary consideration, Mr. Chairman; but it is a case of "You vote for my man and I will vote for your man. You agree to give my man the chief clerkship and I will give you ten votes for your man for chief place." Rarely ever do they inquire as to the fitness of the man, or men who seek the office.

Now, sir, I am not theorizing. That is a fact. It did my heart good to be the friend and supporter of a man who, when a proposition of that sort was presented to him, showed his just indignation by denouncing it on the spot; and it is a credit to Virginia that he was elected to the place to which he aspired.

We ought to save the judiciary of this Commonwealth from that sort of business—bargaining, bargaining. It is quite true that we did get a good man to fill the vacancy on the Court of Appeals some time ago—a judge from my own circuit, and for whom I voted with pleasure; but that contest was not free from scandalous charges; and I do adjure this Judiciary Committee to gravely consider whether it would not be better to accept the amendment offered by the gentleman from Richmond than to run the great risk and danger of a bargain-counter system of selecting judges in a political State convention. To that pass it will come and to that trial of strength between this proposition and that other.

Mr. HUNTON: May I ask the gentleman from Lynchburg a question?

Mr. GLASS: Certainly.

Mr. HUNTON: Do you not anticipate no danger from the nomination of the judges by the Governor?

Mr. GLASS: I imagine, Mr. Chairman, that no system can be devised to which objection will not be urged, but I do not anticipate one one-thousandth part of the danger or abuse in the nomination of judges of the Court of Appeals by the Governor (their nomination to be confirmed by the General Assembly), as would ensue from the selection by the General Assembly, as now conducted.

Gentlemen who have not been members of the General Assembly of Virginia have no appreciation of the way the thing is done here. (Laughter.) In the selection of county judges and every other officer, it is in large degree, a system of reciprocity between members. It is a traffic of votes—"your man for my man, and my man for yours." In the rarest instances do we inquire into the character, capability or adaptability of the candidates themselves. The candidate usually wins his fight whose friends are most adept in the business of profecting and effecting shrewd combinations. I appeal to gentlemen here to consider this matter, and to take time, if need be, for its consideration.

Mr. CARTER: Will the gentleman permit me?

Mr. GLASS: Certainly.

Mr. CARTER: How does it happen that they have gotten such good judges, if that is the system?

Mr. GLASS: Well, I do not know that they have gotten such good judges all the time. (Laughter.) I think the judges of the Court of Appeals are all right, and I think as a general proposition the circuit court judges are good judges, and so with some county judges; but too often unfit men are chosen under a system that is positively vicious. Moreover, good judges ought not to be chosen by any such process as I have indicated.

Gentlemen, I simply cannot adequately describe what the system is. It is beyond me. I cannot, within the bounds of moderation, describe it as it has presented itself to me in a very brief membership of the Senate of Virginia. I can only tell you that I know the fitness of candidates is too often the last consideration; that is all. I have known men who would swap off a guardsman here in the Capitol Square for a judge of the Court of Appeals. (Laughter.) That is a humiliating thing to say, but it is true.

Therefore, I appeal to members of the Judiciary Committee to seriously consider whether they will insist upon this report, when they can get a method that able lawyers upon this floor concede to be a good method, and one far preferable to putting the matter upon the plane of mere partizan manipulation.

I excuse myself, Mr. Chairman, for undertaking, although a layman, to say anything upon the question of the selection of judges, on the ground that my brief (and, I am glad to say, almost concluded public service) has led me to the opinion that no method the wit of man can devise is a worse method than that of having judges selected by the General Assembly, unless it be the method of nominating them in the hubbub and traffic of a political convention. (Applause.)

Mr. WITHERS: Mr. Chairman, I want to say that, like my friend from Lynchburg—

Mr. HUNTON: Will the gentleman yield for a moment?

Mr. WITHERS: Yes, sir.

Mr. HUNTON: I want to ask my friend from Lynchburg this question:

You say there is a great deal more of this sort of thing in the Legislature than would be the case if the appointment were made by the Governor. That I recognize as unquestionably true. Yet in the event that the rare case should come where it would be exercised with reference to the Governor, who had the appointment, would not its effect be very much more disastrous than it could be with the large number of members of the General Assembly?

Mr. GLASS: I think not. I do not think Virginia will ever elect a man to be Governor of this Commonwealth who would so far forget his own self-respect and the dignity of the office to which he aspired as that, beforehand or at any oher time, he would make any bargain to appoint any particular person to the position of a judge of the Court of Appeals in return for political support. It never has been done, and I apprehend it never will be done, under any circumstances or any conditions.

As I understand the amendment proposed by the gentleman from Richmond, no one Governor will be permitted to appoint more than two judges of the Supreme Court, and that only after he has been in office for a period of three years.

Mr. HUNTON: In the regular course of affairs.

Mr. GLASS: In the regular course of affairs. And the very reason urged by the gentleman from Fauquier against the appointment being made by the Governor is, to my mind, a reason why it should be made by him. He said that members of the Legislature were subject to local influences, and wanted to come back, which is true of nine-tenths of them. But the Governor's term is limited to four years, and he is ineligible for re-election; therefore, he would have no incentive to bargaining as to the appointment of judges of the Court of Appeals, even if he were a man of such questionable character as to prompt him to do it.

Gentlemen, it is a contest between the two propositions of appointment by the Governor or selection by the irresponsible processes which prevail in political conventions. In my judgment, the best method yet presented is appointment by the Governor, subject to the ratification of the General Assembly. I therefore hope this committee will vote for the proposition presented by the gentleman from Richmond (Mr. Pollard).

Mr. WITHERS: Mr. Chairman, like my friend from Lynchburg (Mr. Glass) I wish to say one word whichI had not intended to say until he began speaking. Like him, I want to warn a different class of men in this particular contest. My friend, with whom I agree, has said that the Pollard amendment, as it has been styled, should not cause them to lose sight of a great principle, that of allowiing the people to select the head and front of their judicial system.

In view of what has been said by the delegate from Lynchburg, for whom, as this Convention knows, I have the profoundest respect and the highest personal regard, I cannot but think that the method of election proposed by the Judiciary Committee will wane in strength from now on. I hope, therefore, that those who favor the election of the judges of the Supreme Court of Appeals by those who ought to elect, the people, will not lose sight of a great principle through the fact that another plan is offered which possibly to some extent mitigates what we believe to be an evil.

May I call the attention of this Committee to two things? There has been referred to here, in the speeches of the gentleman from Fauquier and the gentleman from Lynchburg, the contest last winter which resulted in the selection of a nominee to fill a vacancy on the bench of the Supreme Court of Appeals. One of the most potent and most powerful factors in that contest was the statement and contention that the governor of the State had, in his selection, ignored precedent, and taken away from a great section of Virginia that to which it was entitled to, viz: the successor to the deceased judge, who was himself from that section. When that argument was made, it was not meant to reflect upon the intelligence or honesty of the executive, or upon the brilliant talents and capacity of him whom he had selected. But, acting largely upon that claim, the Legislature turned down the governor's appointment, as it seems fond of doing, not only now, but in past executive terms, and as it in fact really did last night.

The danger, therefore, of an executive appointment, outside of any others that may threaten it, as stated by the gentleman from Fauquier, is that a contest may arise between the executive and the legislative departments of government.

I submit to the gentlemen of this Committee that the two plans have killed themselves. The gentleman from Fauquier has demolished the amendment of the gentleman from Richmond. The gentleman from Lynchburg, as keen as a razor, as incisive as a rapier's blade, has demolished every contention for the election of judges by the Legislature.

Mr. GLASS: And by the people also, I may modestly remark. (Laughter and applause.)

Mr. WITHERS: That is where we diverge; for, if the gentleman's contention is correct, the bargain-counter of the Legislature and the bargain-counter of the Convention can be done away with by a proposed primary, in which the merits of the candidates will appeal directly to the voters; and of that plan, I understand, the gentleman from Lynchburg is an advocate.

Mr. GLASS: Oh, no, I am not; I never was.

Mr. WITHERS: Of a primary?

Mr. GLASS: No, sir. That is a South Carolina method, to which the gentleman from Fauquier has referred; and it has produced two United States Senators with whom we have some slight acquaintance in Virginia. (Applause.)

Mr. WITHERS: And it has produced nothing so bad as what the gentleman from Fauquier says the plan of the gentleman from Lynchburg will produce, and nothing so bad as what the gentleman from Lynchburg says the plan of the gentleman from Fauquier will produce.

Mr. GLASS: And also the plan of the gentleman from Danville. (Laughter.)

Mr. WITHERS. That is the opinion of the gentleman from Lynchburg; but the gentleman from Danville can cite the fact that the plan of the gentleman from Danville, when in effect from 1850 to 1865, did not produce any such effect.

I want, therefore, to call the attention of this Committee to the fact that these two plans, offered as substitutes to get away from the great people of the Commonwealth of Virginia, have practically destroyed themselves.

Mr. GLASS: Will the gentleman allow me to interrupt him?

Mr. WITHERS: Yes, sir.

Mr. GLASS: The gentleman sees what he will see, and fails to see what he does not want to see. Will the gentleman from Danville indicate where any negroes had the right to vote between 1850 and 1860? Will he undertake to say upon this floor that the electorate which selected these these judges is to be compared with which this Convention was called here to abridge and curtail and purify? Why does he not look in the face of the facts, and all the facts? (Applause.

Mr. WITHERS: I will. I think the most striking fact that I look in the face, Mr. Chairman, is the gentleman from Lynchburg. (Laughter.) But the gentleman from Lynchburg knows, as well as I know, that in the Convention of 1829-30 the attempt to extend suffrage and make manhood suffrage was met by the same class of arguments that are now advanced to prevent the selection of judges by the people, by an electorate purified by this Convention.

Now, one other question. If I do not see what I will not see, and see only what I will see, I am in the respect singularly like my distinguished friend. But I will not digress on account of that interruption. I want to call the attention of the friends of the movement for the election of Supreme Court judges by the people to position of vantage which they have.The opponents of that system, advocating the plan of election by the Legislature and the plan of appointment by the executive, have destroyed each other. They can only urge what they fear are evils in the plan proposed by those who favor the election of judges by the people. Theirs are suppositions as to the evils of our system. Theirs are stated to be facts as to the evils of their respective systems.

Therefore, I say, Mr. Chairman, that I hope those who stand with us for the election of the judges of the Supreme Court of Appeals by the suffrages of the people from whom they ought to derive their authority, to whom they ought to acknowledge all responsibility, will see the position of vantage which they now hold, and cut clean and clear between the two great evils so ably demonstrated by the respective advocates thereof. I hope they will remember that the highest duty of the members of any representative body is to trust the people, to trust those from whom they have their commision, and to let them say who shall render the final decision as to the rights of property between man and man and between man and corporation, and who shall pass finally upon the great questions of life and liberty. If we do that, I say, Mr. Chairman, that this Convention will earn, will deserve and will have the gratitude and the appreciation of the people of Virginia.

Mr. POLLARD: Mr. Chairman, the gentleman from Augusta (Mr. Quarles) has withdrawn his objection to a vote on this proposition by yeas and nays. I therefore repeat my request that the vote be so taken: and in asking unanimous consent, I should like to call the attention of this body to the fact that when the proposition was between the election of judges by the people and the election of judges by the Legislature, a recorded vote was taken. It seems to me it is but just that a similar vote should be taken on this proposition.

The CHAIRMAN: The gentleman from Richmond asks unanimous consent that the roll be called, for the purpose of taking the vote by yeas and nays on his amendment. Is there any objection? The Chair hears none, and the Secretary will call the roll.

The Secretary called the roll.

Mr. POLLARD: I am paired with the gentleman from Chesterfield (Mr. Ingram). If he were present he would vote "nay" and I should vote "yea."

The question having been taken by yeas and nays, the result was announced—yeas 29, nays 50, as follows:

Yeas—Messrs. W. A. Anderson, Bouldin, Braxton, Bristow, Brown, Dunaway, Epes, Fairfax, Garnett, Glass, James W. Gordon, Green, Hardy, Hatton, Claggett B. Jones, Kendall, Meredith, R. Walton Moore, Orr, Quarles, Robertson, Stebbins, Tarry, Walker, Wescott, Willis Wise, Yancey, the President—29.

Nays—Messrs. Allen, Barham, Manly H. Barnes, Thomas H. Barnes, Blair, Boaz, Brooke, Cameron, Clarence J. Campbell, P. W. Campbell, Carter, Cobb, Crismond, Davis, Earman, Fletcher, Gilmore, B. T. Gordon, R. L. Gordon, Gregory, Gwyn, Hamilton, Hancock, Harrison, Hooker, Hunton, G. W. Jones, Keezell, Lawson, McIlwaine, Miller, Mundy, Parks, Pettit, Lincoln, Lindsay, Lovell, Marshall, Phillips, Portlock, Richmond, Rives, Smith, Stuart, Summers, Thom, Thornton, Turnbull, Waddill, Withers—50.

Not Voting—Messrs. George K. Anderson, Ayers, Barbour, Bolen, Chapman, Daniel, Eggleston, Flood, Gillespie, Hubard, Ingram, Moncure, Thomas L. Moore, O'Flaherty, Pedigo, Pollard, Vincent, Walter, Watson, Woodhouse, and Wysor—21.

So Mr. Pollard's amendment was rejected.

The CHAIRMAN: The juestion now is on the motion of the gentleman from Danville (Mr. Withers) to reconsider the vote by which his amendment to section 5 was rejected.

Mr. WISE: I ask unanimous consent for a vote by yeas and nays on the question.

The CHAIRMAN: In the absence of objection, that will be taken as the sense of the body.

Mr. PORTLOCK: I will ask that the amendment be reported.

The CHAIRMAN: The Secretary will read the amendment.

Mr. PARKS: Mr. Chairman, the vote is not on the amendment, I understand?

The CHAIRMAN: It is not. It is on the motion to reconsider the vote by which the amendment was rejected. The Secretary will read the amendment, for the information of the house.

The Secretary read as follows:

"Strike out, after the word 'the' in line 3, section 5, page 22, the words 'joint vote of the two houses of the General Assembly,' and insert the words 'qualified voters of the State,' and after the word 'Constitution' in line 18, strike out the words 'the General Assembly shall elect,' and insert 'there shall be elected.'"

The CHAIRMAN: The Chair will state the question. The effect of the amendment of the gentleman from Danville (Mr. Withers) is to have the judges of the Court of Appeals elected by the people, and not by the General Assembly, as prescribed in the committee's report. The vote now is on the motion to reconsider the vote by which that amendment was rejected. The Secretary will call the roll.

The Secretary called the roll.

Mr. ROBERTSON: I wish to announce that I am paired with the gentleman from Wise (Mr. Ayers). If he were present he would vote "nay," and I should vote "yea."

Mr. GREEN: I am paired with the gentleman from Shenandoah (Mr. Chapman). If he were present, he would vote "yea," and I should vote "nay."

Mr. POLLARD: I am paired with the gentleman from Chesterfield (Mr. Ingram). If he were present he would vote "nay," and I should vote "yea."

The question having been taken by yeas and nays, the result was announced, yeas, 34; nays, 44, as follows:

Yeas—Messrs. Barham, Blair, Boaz, Bristow, Clarence J. Campbell, Davis, Earman, Fairfax, Fletcher, Gilmore, B. T. Gordon, James W. Gordon, Gwyn, Hancock, Hardy, G. W. Jones, Keezell, Lindsay, Lovell, Marshall, Meredith, Miller, R. Walton Moore, Mundy, O'Flaherty, Pettit, Phillips, Quarles, Richmond, Summers, Wescott, Withers, Yancey, the President—34.

Nays—Messrs. Allen, W. A. Anderson, Manly H. Barnes, Thomas H. Barnes, Bouldin, Braxton, Brooke, Brown, Cameron, P. W. Campbell, Carter, Cobb, Crismond, Dunaway, Epes, Garnett, Glass, R. L. Gordon, Gregory, Hamilton, Harrison, Hatton, Hooker, Hunton, Kendall, Lawson, Lincoln, McIlwaine, Orr, Parks, Portlock, Rives, Smith, Stebbins, Stuart, Tarry, Thom, Thornton, Turnbull, Waddill, Walker, Willis, Wise, Woodhouse—44.

Not Voting—Messrs. George K. Anderson, Ayers, Barbour, Bolen, Chapman, Daniel, Eggleston, Flood, Gillespie, Green, Hubard, Ingram, Claggett B. Jones, Moncure, Thomas L. Moore, Pedigo, Pollard, Robertson, Vincent, Walter, Watson, and Wysor—22.

So the motion to reconsider was rejected.

Mr. HUNTON: Mr. Chairman, I rise to a personal explanation. Both the gentleman from Lynchburg (Mr. Glass) and the gentleman from Fairfax (Mr. Moore) stated that in what I had to say as to the method of electing judges, I had illustrated by supposing that the Governor would "trade" for the places on the Court of Appeals. If I said that—and I do not think I did, though I may have—I did not intend to. The illustration that I desired to use was that the friends of the candidate for Governor, who were close to him, and had great influence with him, might make such an arrangement or agreement.

I thought it was due to myself to put myself on record in that matter.

The CHAIRMAN: The Secretary will read section 10.

The Secretary read as follows:

"Sec. 10. For each circuit a judge shall be chosen by the joint vote of the two houses of the General Assembly, who shall, after the first election hereunder, hold his office for a term of eight years, unless sooner removed in the manner prescribed by this Constitution. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office, shall reside in the circuit of which he is judge. At the first election of said judges, under this Constitution the General Assembly shall elect the judges of the districts bearing odd numbersa for a term of four years and those of the districts bearing even numbers for a term of eight years."

Mr. HUNTON: The only change made in that section from the old Constitution is that it was deemed wisest to provide that about one-half of the judges should be elected by one Legislature, and the other half by the other. That is the only change from the old section, I believe.

Mr. SUMMERS: I desire to offer a substitute for that section.

The CHAIRMAN: It will be read.

The Secretary read as follows:

"For each circuit a judge shall be chosen by the electorate."

Mr. SUMMERS: I desire to have the word "voters" substituted for the word "electorate."

Mr. O'FLAHERTY: Mr. Chairman I rise to a parliamentary inquiry. I stated to the committee that I had an amendment to offer to this section, but as I understand the proposition of the gentleman from Washington is a substitute for the section. I want to get my amendment before the committee in time.

The CHAIRMAN: The gentleman can present his amendment.

Mr. O'FLAHERTY: As I understand the ruling of the Chair, a substitute cannot be offered to the section until all the amendments have been acted upon. Is that true?

The CHAIRMAN: A substitute can be offered at any time; but the Chair holds that after the substitute has been offered the friends of the original section can perfect it by amendments, and then the friends of the substitute may present amendments to the substitute, and a vote is taken between the two propositions as thus perfected.

Mr. O'FLAHERTY: Then I will offer an amendment to the 10th section.

Mr. HUNTON: As to the substitute of the gentleman from Washington, I desire to submit to the Chair the question whether it is in order. My impression is that the special order to-day was to pass upon the method of electing judges of the Court of Appeals, judges of the circuit courts, and judges of the city courts. I understand that the House has just passed upon the subject of the amendment of the gentleman from Washington, and if I am correct in that view in my judgment it is not again in order.

The CHAIRMAN: The Chair will state that the matter passed upon related only to the method of electing judges of the Court of Appeals and did not refer to any other judges.

Mr. HUNTON: I thought the special order had been directed not only to the election of judges of the Court of Appeals, but to the method of electing judges under the three sections.

The CHAIRMAN: But the amendments which were considered touched only the method of electing judges of the Court of Appeals.

Mr. HUNTON: I believe the Chair is correct in that statement.

The CHAIRMAN: The Secretary will read the amendment proposed by the gentleman from Warren (Mr. O'Flaherty.)

The SECRETARY: In line 2, strike out all the words after "by" down to the word "after" in line 5, and insert the following words:

"The qualified electors of the circuit over which he shall preside."

In line 19, strike out the words "General Assembly" and all following to the end of the section, and insert in lieu thereof the words:

"Qualified voters shall elect the judges of the districts for a term of eight years."

The first part of the section as amended would read:

"For each circuit a judge shall be chosen by the qualified electors of the circuit over which he shall preside, who

(CONTINUED ON PAGE 5.)